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AUTHORITY: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6416, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656-6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

SOURCE: T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, unless otherwise noted.

Subpart A--Scope

§70.1 General.

(a) The regulations in Subparts C, D, and E of this part set forth the procedural and administrative rules of the Bureau of Alcohol, Tobacco and Firearms for:

(1) The issuance and enforcement of summonses, examination of books of account and witnesses, administration of oaths, entry of premises for examination of taxable objects, granting of rewards for information, canvass of regions for taxable objects and persons, and authority of ATF officers.

(2) The use of commercial banks for payment of excise taxes imposed by 26 U.S.C. Subtitles E and F.

(3) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to tax, additional amounts, and assessable penalties; enforced collection activities; authority for establishment, alteration,

and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco, and firearms taxes, and registration of persons paying a special tax.

(4) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, firearms, ammunition, and explosives.

(b) The regulations in Subpart F of this part relate to the limitations imposed by 26 U.S.C. 6423, on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by Part I, Subchapter A of Chapter 51, I.R.C., or by any corresponding provision of prior internal revenue laws.

(c) The regulations in Subpart G of this part implement 26 U.S.C. 5064, which permits payments to be made by the United States for amounts equal to the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, and beer, previously withdrawn, that were lost, made unmarketable, or condemned by a duly authorized official as a result of disaster, vandalism, or malicious mischief. This subpart applies to disasters or other specified causes of loss, occurring on or after February 1, 1979. This subpart does not apply to distilled spirits, wines, and beer manufactured in Puerto Rico and brought into the United States.

[T.D. ATF-376, 61 FR 31031, June 19, 1996]

§70.2 Forms prescribed

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153-5950.

[T.D. ATF-376, 61 FR 31031, June 19, 1996]

Subpart B--Definitions

§70.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words imparting the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bureau. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

CFR. The Code of Federal Regulations.

Chief, Tax Processing Center. The ATF officer principally responsible for administering regulations in this part concerning special (occupational) tax, and also responsible for filing tax liens and issuing third-party levies, and for disbursing money due to taxpayers under the provisions of 26 U.S.C. enforced and administered by the Bureau.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the delegation order.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Electronic fund transfer or EFT. Any transfer of funds effected by a taxpayer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Enforced collection. Collection of taxes when a taxpayer neglects or refuses to pay voluntarily. Includes such administrative measures as liens and levies.

Levy. The taking of property by seizure and sale or by collection of money due to the debtor, such as wages.

Lien. A charge upon real or personal property for the satisfaction of some debt or performance of an obligation.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Provisions of 26 U.S.C. enforced and administered by the Bureau. Sections 4181 and 4182 of the Internal Revenue Code of 1986 (the Code), as amended; subchapters F and G of chapter 32 of the Code, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Code; subtitle E of the Code; and subtitle F of the Code as it relates to any of the foregoing.

Regional director (compliance). The ATF regional official principally responsible for administering regulations in this part concerning commodity taxes imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau, and for collecting tax by levy (other than third-party levy).

Secretary. The Secretary of the Treasury or designated delegate.

Seizure. The act of taking possession of property to satisfy a tax liability or by virtue of an execution.

Special agent in charge. The principal official responsible for the ATF criminal enforcement program within an ATF district.

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

(Aug. 16, 1954, Ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29, 1956, Ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13535, Mar. 31, 1978; 44 FR 55841, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3002, Jan. 13, 1981; T.D. ATF-301, 55 FR 47608, Nov. 14, 1990; T.D. ATF-331, 57 FR 40327, Sept. 3, 1992; T.D. ATF-378, 61 FR 29955, June 13, 1996]

Subpart C--Discovery of Liability and Enforcement of Laws

EXAMINATION AND INSPECTION

§70.21 Canvass of regions for taxable persons and objects.

Each regional director (compliance) shall, to the extent deemed practicable, cause officers or employees under the regional director's supervision and control to proceed, from time to time, through the region and inquire after and concerning all persons therein who may be liable to pay any tax, imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, and all persons owning or having the care and management of any objects with respect to which such tax is imposed.

[T.D. ATF-331, 57 FR 40327, Sept. 3, 1992]

§70.22 Examination of books and witnesses.

(a) In general.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any such tax, or collecting any such liability, any authorized officer or employee of the Bureau may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) Summonses.

For the purposes described in paragraph (a) of this section the officers and employees of the Bureau designated in paragraph (c) of this section are authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any person deemed proper, to appear before a designated officer or employee of the Bureau at a time and place named in the

summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The officers and employees designated in paragraph (c) of this section may designate any other employee of the Bureau as the individual before whom a person summoned pursuant to 26 U.S.C. 7602 shall appear. Any such other employee, when so designated in a summons, is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons. The authority to issue a summons may not be redelegated. See §70.302 of this part for rules concerning payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and this section.

(c) *Persons who may issue summonses.*

The following officers and employees of the Bureau are authorized to issue summonses pursuant to 26 U.S.C. 7602:

- (1) Regional director (compliance), and
- (2) Office of Inspection: Assistant Director, Deputy Assistant Director, and regional inspectors.

(Aug. 16, 1954, Chapter 736, 68A Stat. 901; (26 U.S.C. 7602))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-42, 42 FR 8367, Feb. 10, 1977; T.D. ATF-301, 55 FR 47608, Nov. 14, 1990; T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

§70.23 Service of summonses.

(a) *In general.*

A summons issued under 26 U.S.C. 7602 shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode. The certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) *Persons who may serve summonses.*

The following officers and employees of the Bureau are authorized to serve a summons issued under 26 U.S.C. 7602:

- (1) The officers and employees designated in paragraph (c) of §70.22; and
- (2) Chiefs, field operations, area supervisors, inspectors, regional audit managers and auditors, Compliance Operations; special agents, Internal Affairs; and all special agents, Law Enforcement. The authority to serve a summons may be redelegated only by the Assistant Director, Office of Inspection, and regional directors (compliance), to officers and employees under their jurisdiction.

(68A Stat. 902, as amended (26 U.S.C. 7603); 26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat.

744), 27 U.S.C. 205, 22 U.S.C. 2778, 26 U.S.C. 7602, and 5 U.S.C. 301)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-48, 43 FR 13531, Mar. 31, 1978; T.D. ATF-201, 50 FR 12533, Mar. 29, 1985; T.D. ATF-249, 52 FR 5961, Feb. 27, 1987; T.D. ATF-301, 55 FR 47608, Nov. 14, 1990]

§70.24 Enforcement of summonses.

(a) In general.

Whenever any person summoned under 26 U.S.C. 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, application may be made to the judge of the district court or to a U.S. magistrate for the district within which the person so summoned resides or is found for an attachment against him as for a contempt.

(b) Persons who may apply for an attachment.

The officers and employees of the Bureau designated in paragraph (c) of §70.22 are authorized to apply for an attachment as provided in paragraph (a) of this section. The authority to apply for an attachment for the enforcement of a summons may not be redelegated.

(68A Stat. 902, as amended (26 U.S.C. 7604))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973; 38 FR 33767, Dec. 7, 1973]

§70.25 Special procedures for third-party summonses.

(a) When the Bureau summons the records of persons defined by 26 U.S.C. 7609(a)(3) as "third-party recordkeepers", the person about whom information is being gathered must be notified in advance, except when:

- (1) The summons is served on the person about whom information is being gathered, or any officer or employee of such person, or
- (2) The summons is served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or
- (3) The summons does not identify the person with respect to whose liability the summons is issued (a "John Doe" summons issued under the provisions of 26 U.S.C. 7609(f)), or
- (4) The Director petitions, and the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records.

(b) Within 3 days of the day on which the summons was served, the notice required by paragraph (a) of this section shall be served upon the person entitled to notice, or mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, left with the person summoned. No examination of any records required to be produced under a summons as to which notice is required under paragraph (a) of this section may be made:

(1) Before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in this paragraph, or

(2) Where a proceeding under paragraph (c) of this section was begun within the 20-day period referred to in that paragraph and the requirements of paragraph (c) of this section have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(c) If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed, by certified or registered mail, to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitation are suspended under 26 U.S.C. 7609(e). Title 26 U.S.C. 7609 does not restrict the authority under 26 U.S.C. 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination.

(26 U.S.C. 7609)

[T.D. ATF-301, 55 FR 47608, Nov. 14, 1990]

§70.26 Third-party recordkeepers.

(a) *Definitions--*

(1) *Accountant.* A person is an "accountant" under 26 U.S.C. 7609(a)(3)(F) for purposes of determining whether that person is a third-party recordkeeper if the person is registered, licensed, or certified under State law as an accountant.

(2) *Attorney.* A person is an "attorney" under 26 U.S.C. 7609(a)(3)(E) for purposes of determining whether that person is a third-party recordkeeper if the person is admitted to the bar of a State or the District of Columbia.

(3) *Credit cards--*

(i) *Person extending credit through credit cards.*

The term "person extending credit through credit cards or similar devices" under 26 U.S.C. 7609(a)(3)(C) generally includes any person who issues a credit card. It does not include a seller of goods or services that honors credit cards issued by other parties but does not extend credit on the basis of credit cards or similar devices issued by itself.

(ii) [Reserved]

(iii) *Similar devices to credit cards.* An object is a "similar device" to a credit card under 26 U.S.C. 7609(a)(3)(C) only if it is physical in nature, such as a coupon book, a charge plate, or a letter of credit. Thus, a person who extends credit by requiring credit customers to sign sales slips without requiring use of physical objects issued by that person is not a third-party recordkeeper under 26 U.S.C. 7609(a)(3)(C).

(b) *When third-party recordkeeper status arises.*

A person is a "third-party recordkeeper" with respect to a given set of records only if the person made or kept the records in the person's capacity as a third-party recordkeeper. Thus, for instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to:

(1) Records relating to noncredit card transactions, such as a cash sale by the issuer to a holder of the issuer's credit card; or

(2) Records relating to transactions involving the use of another issuer's credit card.

(c) *Duty of third-party recordkeeper--*

(1) *In General.* Upon receipt of a summons, the third-party recordkeeper ("recordkeeper") must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the records are to be examined regardless of the institution or anticipated institution of a proceeding to quash or the recordkeeper's intervention (as allowed under 26 U.S.C. 7609(a)(3)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable--*

(i) *In general.*

A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the "Certificate of the Secretary" (as defined in paragraph (c)(2)(ii) of this section) or an order of a court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary.* The Director may issue to the recordkeeper a "Certificate of the Secretary" stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons has expired; and

(B) That no proceeding has been properly instituted within that period.

The Director may also issue a "Certificate of the Secretary" to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs.* Recordkeepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by 26 U.S.C. 7610, even if the summons ultimately is not enforced.

(26 U.S.C. 7609)

[T.D. ATF-301, 55 FR 47608, Nov. 14, 1990]

§70.27 Right to intervene; right to institute a proceeding to quash.

(a) *Notified person.*

Under 26 U.S.C. 7609(a), the Bureau must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Bureau to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Bureau issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under 26 U.S.C. 7609(a). Therefore, if the Bureau requests the records of a joint bank account of A and B, both of whom are named in the summons, then both A and B are notified persons entitled to notice under 26 U.S.C. 7609(a).

(b) *Right to institute a proceeding to quash--*

(1) *In general.* Title 26 U.S.C. 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on 26 U.S.C. 7609(b). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under 26 U.S.C. 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by 26 U.S.C. 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash.* In order to institute a proceeding to quash a summons, the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

- (i) File a petition to quash in the name of the notified person in a district court having jurisdiction.
- (ii) Notify the Bureau by sending a copy of that petition by registered or certified mail to the Bureau employee and office designated to receive the copy in the notice of summons that was given to the notified person, and
- (iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Bureau in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Bureau employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person, but instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash.* If the notified person fails to institute a proceeding to quash within 20 days following the day the notice was served on or mailed to such notified person, the Bureau may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see 26 U.S.C. 7609(d)(1)).

(c) *Presumption no notice has been mailed.*

Title 26 U.S.C. 7609(b)(2)(B) permits a notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Bureau and the summoned person. Unless the notified person has notified both the Bureau and the summoned person in the appropriate manner, the notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Bureau within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed.

(26 U.S.C. 7609)

[T.D. ATF-301, 55 FR 47609, Nov. 14, 1990]

§70.28 Summonses excepted from 26 U.S.C. 7609 procedures.

(a) *In aid of the collection of certain liabilities--*

(1) *In general.* Title 26 U.S.C. 7609(c)(2)(B) contains an exception to the general notice requirement when a summons is issued to a third-party recordkeeper. That section excepts summonses issued in aid of the collection of the liability of any person against whom an assessment has been made or judgment rendered or the liability at law or in equity of any transferee of such a person.

(2) *Examples.* Examples of summonses referred to in paragraph (a)(1) of this section are:

(i) Summonses issued to determine the amount held in a bank in the name of a person against whom an assessment has been made or judgment rendered;

(ii) Summonses issued to enforce transferee liability for a tax which has been assessed.

(b) *Numbered account (or similar arrangement).*

Under 26 U.S.C. 7609(c)(2), a summons issued solely to determine the identity of a person having a numbered account (or similar arrangement) with a bank or other institution is excepted from the requirements of 26 U.S.C. 7609. A "numbered account (or similar arrangement)" under 26 U.S.C. 7609(c)(2) is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person's identity. A "person having a numbered account (or similar arrangement)" includes the person who opened the account and any person authorized to use the account or to receive records or statements concerning it.

(26 U.S.C. 7609)

[T.D. ATF-301, 55 FR 47610, Nov. 14, 1990]

§70.29 Suspension of statutes of limitations.

(a) *Suspension while a proceeding under 26 U.S.C. 7609(b) is pending.*

Under 26 U.S.C. 7609(e)(1), the statutes of limitations of 26 U.S.C. 6501 and 6531 are suspended if a notified person with respect to whose liability a summons is issued, or the notified person's agent, nominee, or other person acting under the direction or control of the notified person, takes any action as provided in 26 U.S.C. 7609(b).

(1) *Agent, nominee, etc.* A person is a notified person's agent, nominee, or other person acting under the direction or control of a notified person for purposes of 26 U.S.C. 7609(e) if the person with respect to whose liability the summons is issued has the ability in fact or at law to cause the agent, etc., to take the actions permitted under 26 U.S.C. 7609(b). Thus, in the case of a corporation, direction or control by the notified person may exist even though less than 50 percent of the voting power of the corporation is held by the notified person.

(2) *Period during which a proceeding, etc., is pending.* Under 26 U.S.C. 7609(e), the statute of limitations shall be suspended for the period during which a proceeding and any appeals regarding the enforcement of such summons is pending. This period begins on the date the petition to quash the summons is filed in district court. The period continues until all appeals are disposed of, or until the expiration of the period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. The periods of limitations which are suspended under 26 U.S.C. 7609(e) are those which apply to the taxable periods to which the summons relates.

(3) *Taking of action as provided in 26 U.S.C. 7609(b).* Title 26 U.S.C. 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase "takes any action as provided in subsection (b)", found in 26 U.S.C. 7609(e), includes any intervention whether or not 26 U.S.C. 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of 26 U.S.C. 7609(b)(2), relating to the right of a person to institute a proceeding to quash. Thus, for instance, if a notified person notifies a person who has been summoned by sending a copy of the petition by registered or certified mail but does not mail a copy of that notice to the appropriate person and office under 26 U.S.C. 7609(b)(2)(B), the notified person has taken an action under 26 U.S.C. 7609(e).

(b) *Suspension after 6 months of service of summons.*

In the absence of the resolution of the third-party recordkeeper's response to the summons described in 26 U.S.C. 7609(c) or the summoned party's response to a summons described in 26 U.S.C. 7609(f) the running of any period of limitations under 26 U.S.C. 6501 or under 26 U.S.C. 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action

as provided in 26 U.S.C. 7609(b)) shall be suspended for the period:

(1) Beginning on the date which is 6 months after the service of such summons,
and

(2) Ending with the final resolution of such response.

(26 U.S.C. 7609)

[T.D. ATF-301, 55 FR 47610, Nov. 14, 1990]

§70.30 Time and place of examination.

(a) *Time and place.*

The time and place of examination pursuant to the provisions of 26 U.S.C. 7602 shall be such time and place as may be fixed by an officer or employee of the Bureau and as are reasonable under the circumstances. The date fixed for appearance before an officer or employee of the Bureau shall not be less than 10 days from the date of the summons.

(b) *Restrictions on examination of taxpayer.*

No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless an authorized internal revenue or Bureau officer, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

(68A Stat. 902, as amended (26 U.S.C. 7605))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.31 Entry of premises for examination of taxable objects.

(a) *General.*

Any officer of the Bureau may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose.

(b) *Distilled spirits plants.*

Any officer of the Bureau may, at all times, as well by night as by day, enter any plant or any other premises where distilled spirits are produced or rectified, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any Bureau officer, having demanded admittance, and having declared his name and office, is not admitted to such premises by the proprietor or other person having charge thereof, he may at all times, use such force as is necessary for him to gain entry to such premises.

(c) *Authority to break up grounds.*

Any officer of the Bureau, and any person acting in his aid, may break up the ground on any part of a distilled spirits plant, or any other premises where spirits are produced or rectified, or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any cock, or to determine whether such pipe or other conveyance conveys or conceals any spirits, mash, wort, or beer, or other liquor, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

(68A Stat. 903, 72 Stat. 1357 (26 U.S.C. 7606, 5203))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.32 Examination of records and objects.

Any officer of the Bureau may enter, during business hours, the premises of any regulated establishment for the purpose of inspecting and examining any records, articles, or other objects required to be kept by such establishment under 18 U.S.C. chapter 40 or 44, or provisions of 26 U.S.C. enforced and administered by the Bureau, or regulations issued pursuant thereto.

(68A Stat. 715, as amended, 903, 72 Stat. 1348, 1361, 1373, 1381, 1390, 1391, 1395, 82 Stat. 231, as amended, 84 Stat. 955; (26 U.S.C. 5741, 7606, 5146, 5207, 5275, 5367, 5415, 5504, 5555, 18 U.S.C. 923, 843))

[T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

§70.33 Authority of enforcement officers of the Bureau.

Any special agent or other officer of the Bureau by whatever term designated, whom the Director or a special agent in charge charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws administered and enforced by the Bureau pertaining to commodities subject to regulation by the Bureau, the enforcement of which such officers are responsible, may perform the following functions:

- (a) Carry firearms;
- (b) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;
- (c) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and
- (d) In respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

(53 Stat. 1291, 62 Stat. 840, 68 Stat. 848, as amended, 72 Stat. 1429, as amended, 82 Stat. 233, as amended, 84 Stat. 956 (49 U.S.C. 782, 18 U.S.C. 3615, 22 U.S.C. 1934, 26 U.S.C. 7608, 18 U.S.C. 924, 844); 26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat. 744))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-48, 43 FR 13531, Mar. 31, 1978. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.34 Listing by regional directors (compliance) of taxable objects owned by nonresidents of ATF regions.

Whenever there are in any ATF region any articles subject to tax, which are not owned or possessed by, or under the care or control of, any person within such region, and of which no list has been transmitted to the regional director (compliance), as required by law or by regulations prescribed pursuant to law, the regional director (compliance), or other authorized ATF officer or employee, shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary, and shall make lists of the same according to the forms prescribed. Such list, being subscribed by the regional director (compliance) or other authorized ATF officer or employee, shall be sufficient lists of such articles for all purposes.

(26 U.S.C. 6021)

[T.D. ATF-301, 55 FR 47610, Nov. 14, 1990]

GENERAL POWERS AND DUTIES

§70.40 Authority to administer oaths and certify.

The officers and employees of the Bureau designated in paragraph (b) of §70.23 are authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the tax laws administered by the Bureau, the Federal Alcohol Administration Act, or regulations issued thereunder, except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. The authority to administer oaths and to certify may be redelegated only by the Assistant Director, Office of Inspection, and special agents in charge, to officers and employees under their jurisdiction.

(68A Stat. 904 (26 U.S.C. 7622))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-48, 44 FR 55841, Sept. 28, 1979. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.41 Rewards for information relating to violations of tax laws administered by the Bureau.

(a) *In general.*

A special agent in charge may approve such reward as he deems suitable for information that leads to the detection and punishment of any person guilty of violating any tax law administered by the Bureau or conniving at the same. The rewards provided for by 26 U.S.C. 7623 are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law.

(b) *Eligibility to file claim for reward--*

(1) *In general.* Any person, other than certain present or former federal employees (see paragraph (b)(2) of this section), who submits, in the manner set forth in paragraph (d) of this section, information relating to the violation of tax

laws administered and enforced by the Bureau, is eligible to file a claim for reward under 26 U.S.C. 7623.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time he came into possession of information relating to violations of tax laws administered by the Bureau, or at the time he divulged such information, shall be eligible for reward under 26 U.S.C. 7623 and this section. Any other federal employee, or former federal employee, is eligible to file a claim for reward if the information submitted came to his knowledge other than in the course of his official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to his death, the informant was eligible to file a claim for such reward under 26 U.S.C. 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to such a claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim for reward.

(c) *Amount and payment of reward.*

All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, shall be taken into account by a SAC in determining whether a reward shall be paid, and, if so, the amount thereof. The amount of a reward shall represent what the special agent in charge deems to be adequate compensation in the particular case, normally not to exceed 10 percent of the additional taxes, penalties, and fines which are recovered as a result of the information. No reward, however, shall be paid with respect to any additional interest that may be collected. Payment of a reward will be made as promptly as the circumstances of the case permit, but generally not until the taxes, penalties, or fines involved have been collected. However, the informant may waive any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, in which case the claim may be immediately processed. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a special agent in charge with respect to the payment of any reward or the amount thereof.

(d) *Submission of information.*

Persons desiring to claim rewards under the provisions of 26 U.S.C. 7623 and this section may submit information relating to violations of tax laws administered by the Bureau, in person, to the Office of the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 or to the office of a special agent in charge. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Anonymity.*

No unauthorized person shall be advised of the identity of an informant.

(f) *Filing claim for reward.*

An informant who intends to claim a reward under 26 U.S.C. 7623 should notify the person to whom he submits his information of such intention, and must file a formal claim, signed with his true name, as soon after submission of the information as practicable. If other than the informant's true name was used in furnishing the information, the claimant must include with his claim satisfactory proof of his identity as that of the informant. Claim for reward under the provisions of 26 U.S.C. 7623 shall be made on Form 25. Form 25 should be obtained from offices where claims for reward may be submitted: These are offices of SAC and the Office of the Director, Washington, DC 20226.

(68A Stat. 904 (26 U.S.C. 7623); 26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat. 744))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-48, 43 FR 13531, Mar. 31, 1978; 44 FR 55841, Sept. 28, 1979. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990; T.D. ATF-312, 56 FR 31085, July 9, 1991]

§70.42 Returns prepared or executed by regional directors (compliance) or by other ATF officers.

(a) *Preparation of returns--*

(1) *General.* If any person required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer provided the person required to make the return consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the regional director (compliance) or the Chief, Tax Processing Center, as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by such person.

(b) *Execution of returns--*

(1) *General.* If any person required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return fails to make a return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer shall make such return from the officer's own knowledge and from such information as the officer can obtain through testimony or otherwise.

(2) *Status of returns.* Any return made in accordance with paragraph (b)(1) of this section and subscribed by the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer shall be prima facie good and sufficient for all legal purposes.

(c) *Cross references.*

- (1) For provisions that the return executed by a regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer will not start the running of the period of limitations on assessment and collection, see 26 U.S.C. 6501(b)(3) and §70.222(b) of this part.
- (2) For additions to the tax and additional amounts for failure to file returns, see section 6651 of the Internal Revenue Code.
- (3) For additions to the tax for failure to pay tax, see sections 5684, 5761, and 6653 of the Internal Revenue Code.
- (4) For failure to make deposit of taxes or overstatement of deposit claims, see section 6656 of the Internal Revenue Code.
- (5) For an additional penalty for tendering a bad check or money order, see section 6657 of the Internal Revenue Code.
- (6) For certain failures to pay tax with respect to cases pending under Title 11 of the United States Code, see section 6658 of the Internal Revenue Code.
- (7) For failure to supply identifying numbers, see section 6676 of the Internal Revenue Code.
- (8) For penalties for aiding and abetting understatement of tax liability, see section 6701 of the Internal Revenue Code.
- (9) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203 of the Internal Revenue Code.
- (10) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207 of the Internal Revenue Code.
- (11) For authority to examine books and witnesses, see section 7602 of the Internal Revenue Code and §70.22.

(26 U.S.C. 6020)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606 and 47610, Nov. 14, 1990]

Subpart D--Collection of Excise and Special (Occupational) Tax

Collection--General Provisions

§70.51 Collection authority.

The taxes imposed by provisions of 26 U.S.C. enforced and administered by the Bureau shall be collected by regional directors (compliance), the Chief, Tax Processing Center, and other ATF officials designated by the Director of the Bureau.

(26 U.S.C. 6301)

[T.D. ATF-301, 55 FR 47611, Nov. 14, 1990]

§70.52 Signature presumed authentic.

An individual's name signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by that individual.

(26 U.S.C. 6064)

[T.D. ATF-301, 55 FR 47611, Nov. 14, 1990]

Receipt of Payment

§70.61 Payment by check or money order.

(a) *Authority to Receive--*

(1) *General.*

(i) Regional director(s) (compliance) or the Chief, Tax Processing Center, may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in U.S. currency at par, and subject to the further provisions contained in this section. The Director may accept such checks or money orders in payment for internal revenue stamps (authorized under Subtitle E of the Internal Revenue Code or any provision of Subtitle F which relates to Subtitle E) to the extent and under the conditions prescribed in paragraph (a)(2) of this section. A check or money order in payment for internal revenue taxes or internal revenue stamps should be made payable to the Bureau of Alcohol, Tobacco and Firearms. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means:

(A) U.S. postal, bank, express, or telegraph money order; and

(B) Money order issued by a domestic building and loan association (as defined in section 7701(a)(19) of the Internal Revenue Code) or by a similar association incorporated under the laws of a possession of the United States;

(C) A money order issued by such other organization as the Director may designate; and

(D) A money order described in paragraph (a)(1)(ii) of this section in cases therein described. However, the regional director(s) (compliance) or the Chief, Tax Processing Center, may refuse to accept any personal check whenever there is good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his/her tax by postal money order of such country. For a list of such countries, see section 171.27 of the Postal Manual of the United States.

(iii) If one check or money order is remitted to cover two or more persons'

taxes, the remittance should be accompanied by a letter of transmittal clearly identifying--

- (A) Each person whose tax is to be paid by the remittance;
- (B) The amount of the payment on account of each such person; and
- (C) The kind of tax paid.

(2) *Payment for internal revenue stamps--In general.* The Director may accept checks and money orders described in paragraph (a)(1) of this section, in payment for internal revenue stamps authorized under Subtitle E of the Internal Revenue Code or under any provision of Subtitle F which relates to Subtitle E. However, the Director may refuse to accept any personal check whenever there is good reason to believe that the check will not be honored upon presentment.

(3) *Payment of tax on distilled spirits, wine, beer, tobacco products, pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wine or beer products (imposed under Chapter 51 of the Internal Revenue Code), or tobacco products (imposed under chapter 52 of the Internal Revenue Code), or pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges (imposed under chapter 32 of the Internal Revenue Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the regional director(s) (compliance) or the Chief, Tax Processing Center, finds that the revenue will not be jeopardized by the acceptance of personal checks, shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check, drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a money order as described in paragraph (a)(1) of this section.

(b) *Checks or money orders not paid--*

(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes is not released from liability until the check or money order is paid; and, if the check or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 of the Internal Revenue Code. For assessment of the amount of a check or money order not duly paid see section 6201(a)(2)(B) of the Internal Revenue Code.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check (or other guaranteed draft) or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United

States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has the right to exact payment from the person required to make the payment.

(26 U.S.C. 6311)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990; T.D. ATF-331, 57 FR 40328, Sept. 3, 1992; T.D. ATF-353, 59 FR 2522, Jan. 18, 1994]

§70.62 Fractional parts of a cent.

In the payment of any tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall not be disregarded in the computation of taxes.

(26 U.S.C. 6313)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.63 Computations on returns or other documents.

(a) *Amounts shown on forms.*

To the extent permitted by any ATF form or instructions prescribed for use with respect to any ATF return, declaration, statement, or other document, or supporting schedules, any amount required to be reported in such form may be entered at the nearest whole dollar amount. The extent to which, and the conditions under which, such whole dollar amounts may be entered on any form will be set forth in the instructions issued with respect to such form. For the purpose of the computation to the nearest dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by \$1. The following illustrates the application of this paragraph:

Exact amount	To be reported as
\$18.49	\$18
\$18.50	19
\$18.51	19

(b) *Election not to use whole dollar amounts--*

(1) *Method of election.* Where any ATF form, or the instructions issued with respect to such form, provide that whole dollar amounts shall be reported, any person making a return, declaration, statement, or other document on such form may elect not to use whole dollar amounts by reporting thereon all amounts in full, including cents.

(2) *Time of election.* The election not to use whole dollar amounts must be made at the time of filing the return, declaration, statement, or other document. Such election may not be revoked after the time prescribed for filing such return, declaration, statement, or other document, including extensions of time granted for such filing. Such election may be made on any return, declaration, statement, or other document which is filed after the time prescribed for filing (including extensions of time), and such an election is irrevocable.

(3) *Effect of election.* The taxpayer's election shall be binding only on the return, declaration, statement, or other document filed for a taxable year or period, and a new election may be made on the return, declaration, statement, or other document filed for a subsequent taxable year or period.

(4) *Fractional part of a cent.* For treatment of the fractional part of a cent in the payment of taxes, see 26 U.S.C. 6313 and §70.62 of this part.

(c) *Inapplicability to computation of amount.*

The provisions of paragraph (a) of this section apply only to amounts required to be reported on a return, declaration, statement, or other document. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts. For example, each item of liability must be taken into account at its exact amount, including cents, in computing the amount of total liability required to be reported on a tax return or supporting schedule. It is the amount of total liability, so computed, which is to be reported at the nearest whole dollar on the return or supporting schedule.

(26 U.S.C. 6102)

[T.D. ATF-301, 55 FR 47611, Nov. 14, 1990]

§70.64 Receipt for taxes.

The regional director (compliance) or the Chief, Tax Processing Center shall, upon request, issue a receipt for each tax payment made (other than a payment for stamps sold or delivered). In addition, the regional director (compliance) or the Chief, Tax Processing Center or other authorized ATF officer or employee shall issue a receipt for each payment of 1 dollar or more made in cash, whether or not requested. In the case of payments made by check, the canceled check is usually a sufficient receipt. No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(26 U.S.C. 6314)

[T.D. ATF-301, 55 FR 47611, Nov. 14, 1990]

§70.65 Use of commercial banks.

For provisions relating to the use of commercial banks and electronic fund transfer of taxpayment to the Treasury Account, see the regulations relating to the particular tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-77, 46 FR 3002, Jan. 13, 1981. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Assessment

§70.71 Assessment authority.

The regional director (compliance) and the Chief, Tax Processing Center are authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau. The regional director (compliance) and the Chief, Tax Processing Center are

further authorized and required to make the determinations and the assessments of such taxes. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the regional director (compliance) and the Chief, Tax Processing Center to make assessment includes the following:

(a) *Taxes shown on return.*

The regional director (compliance) or the Chief, Tax Processing Center shall assess all taxes determined by the taxpayer or by the regional director (compliance) or by the Chief, Tax Processing Center and disclosed on a return or list.

(b) *Unpaid taxes payable by stamp.*

(1) If without use of the proper stamp:

(i) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(ii) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs, the regional director (compliance) or the Chief, Tax Processing Center, upon such information as can be obtained, must estimate the amount of the tax which has not been paid and the regional director (compliance) or the Chief, Tax Processing Center must make assessment therefor upon the person the regional director (compliance) or the Chief, Tax Processing Center determines to be liable for the tax. However, the regional director (compliance) or the Chief, Tax Processing Center may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(2) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the regional director (compliance) or the Chief, Tax Processing Center shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6201)

[T.D. ATF-301, 55 FR 47611, Nov. 14, 1990]

§70.72 Method of assessment.

The regional director (compliance) and the Chief, Tax Processing Center shall appoint one or more assessment officers. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, the taxpayer shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable,

and the amounts assessed.

(26 U.S.C. 6203)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606 and 47612, Nov. 14, 1990]

§70.73 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the regional director (compliance) or the Chief, Tax Processing Center, subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

(26 U.S.C. 6204)

[T.D. ATF-301, 55 FR 47612, Nov. 14, 1990]

§70.74 Request for prompt assessment.

(a) Except as otherwise provided in §70.223 of this part, any tax for which a return is required and for which:

(1) A decedent or an estate of a decedent may be liable, or

(2) A corporation which is contemplating dissolution, is in the process of dissolution, or has been dissolved, may be liable, shall be assessed, or a proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after the receipt of a written request for prompt assessment thereof.

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the regional director (compliance) of the region in which the taxpayer is located or with the Chief, Tax Processing Center. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the prompt assessment is requested, and must clearly indicate that it is a request for prompt assessment under the provisions of 26 U.S.C. 6501(d). The effect of such a request is to limit the time in which an assessment of tax may be made, or a proceeding in court without assessment for collection of tax may be begun, to a period of 18 months from the date the request is filed with the proper regional director (compliance) or with the Chief, Tax Processing Center. The request does not extend the time within which an assessment may be made, or a proceeding in court without assessment shall be begun, after the expiration of 3 years from the date the return was filed. This special period of limitations will not apply to any return filed after a request for prompt assessment has been made unless an additional request is filed in the manner provided herein.

(c) In the case of a corporation the 18-month period shall not apply unless:

(1) The written request notifies the regional director (compliance) or the Chief, Tax Processing Center that the corporation contemplates dissolution at or before the expiration of such 18-month period; the dissolution is in good faith begun

before the expiration of such 18-month period; and the dissolution so begun is completed either before or after the expiration of such 18-month period; or

(2) The written request notifies the regional director (compliance) or the Chief, Tax Processing Center that a dissolution has in good faith begun, and the dissolution is completed either before or after the expiration of such 18-month period; or

(3) A dissolution has been completed at the time the written request is made.

(26 U.S.C. 6501(d))

[T.D. ATF-301, 55 FR 47612, Nov. 14, 1990, as amended by T.D. ATF-353, 59 FR 2522, Jan. 18, 1994]

§70.75 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

(a) If the regional director (compliance) or the Chief, Tax Processing Center believes that the collection of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau will be jeopardized by delay, the regional director (compliance) or the Chief, Tax Processing Center shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A regional director (compliance) or the Chief, Tax Processing Center will make an assessment under this section if collection is determined to be in jeopardy because at least one of the following conditions exists.

(1) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.

(2) The taxpayer is or appears to be designing quickly to place the taxpayer's property beyond the reach of the Government either by removing it from the United States, by concealing it, or by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be threatened.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the regional director (compliance) or the Chief, Tax processing Center shall, without delay, issue a notice and demand for payment thereof in full.

(c) See 26 U.S.C. 7429 with respect to requesting the regional director (compliance) or the Chief, Tax Processing Center to review the making of the jeopardy assessment.

(d) For provisions relating to stay of collection of jeopardy assessments, see §70.76 of this part.

(26 U.S.C. 6862 and 6863)

[T.D. ATF-301, 55 FR 47612, Nov. 14, 1990]

§70.76 Stay of collection of jeopardy assessment; bond to stay collection.

(a) The collection of taxes assessed under 26 U.S.C. 6862 (referred to as a "jeopardy assessment" for purposes of this section) of any tax may be stayed by

filing with the regional director (compliance) or Chief, Tax Processing Center a bond on the form to be furnished by ATF upon request.

(b) The bond may be filed:

(1) At any time before the time collection by levy is authorized under 26 U.S.C. 6331(a), or

(2) After collection by levy is authorized and before levy is made on any property or rights to property, or

(3) In the discretion of the regional director (compliance) or the Chief, Tax Processing Center, after any such levy has been made and before the expiration of the period of limitations on collection.

(c) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the regional director (compliance) or the Chief, Tax Processing Center) of the jeopardy assessment collection of which is sought to be stayed. See 26 U.S.C. 7101 and §70.281, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), for which the collection is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(d) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or of any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the regional director (compliance) or the Chief, Tax Processing Center, then the bond shall (at the request of the taxpayer) be proportionately reduced.

(26 U.S.C. 6863)

[T.D. ATF-301, 55 FR 47613, Nov. 14, 1990]

§70.77 Collection of jeopardy assessment; stay of sale of seized property pending court decision.

(a) *General rule.*

In the case of an assessment under 26 U.S.C. 6862, and property seized for the collection of such assessment shall not (except as provided in paragraph (b) of this section) be sold until the latest of the following occurs:

(1) The period provided in 26 U.S.C. 7429(a)(2) to request the regional director (compliance) or Chief, Tax Processing Center to review the action taken expires.

(2) The period provided in 26 U.S.C. 7429(b)(1) to file an action in U.S. District Court expires if a request for redetermination is made to the regional director (compliance) or Chief, Tax Processing Center.

(3) The U.S. District Court judgment in such action becomes final, if a civil action is begun in accordance with 26 U.S.C. 7429(b).

(b) *Exceptions.*

Notwithstanding the provisions of paragraph (a) of this section, any property seized may be sold:

- (1) If the taxpayer files with the regional director(s) (compliance) or the Chief, Tax Processing Center a written consent to the sale, or
- (2) If the regional director(s) (compliance) or the Chief, Tax Processing Center determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property, or
- (3) If the property is of a type to which 26 U.S.C. 6336 (relating to sale of perishable goods) is applicable.

(26 U.S.C. 6863)

[T.D. ATF-301, 55 FR 47613, Nov. 14, 1990, as amended by T.D. ATF-353, 59 FR 2522, Jan. 18, 1994]

Notice and Demand

§70.81 Notice and demand for tax.

(a) *General rule.*

Where it is not otherwise provided by provisions of 26 U.S.C. enforced and administered by the Bureau, the regional director (compliance) or the Chief, Tax Processing Center shall, after the making of an assessment of a tax pursuant to §70.71 of this part, give notice to each person liable for the unpaid tax, stating the basis for the tax due, the amount of tax, interest, additional amounts, additions to the tax and assessable penalties, and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.*

If any tax is assessed prior to the last date prescribed for payment of such tax, demand that such tax be paid will not be made before such last date, except where it is believed collection would be jeopardized by delay.

(26 U.S.C. 6303 and 7521)

[T.D. ATF-301, 55 FR 47613, Nov. 14, 1990]

§70.82 Payment on notice and demand.

Upon receipt of notice and demand from the regional director (compliance) or the Chief, Tax Processing Center, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

(26 U.S.C. 6155)

[T.D. ATF-301, 55 FR 47613, Nov. 14, 1990]

Interest

§70.90 Interest on underpayments.

(a) *General rule.*

Interest at the underpayment rate referred to in §70.93 of this part shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) *Interest on penalties, additional amounts, or additions to the tax--*

(1) *General.* Interest shall be imposed on any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) of the Internal Revenue Code) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(2) *Interest on certain additions to tax.* Interest shall be imposed under this section on any addition to tax imposed by section 6651(a)(1) of the Internal Revenue Code for the period which (i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and (ii) ends on the date of payment of such addition to tax.

(c) *Payments made within 10 days after notice and demand.*

If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(d) *Satisfaction by credits.*

If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under section 6601 of the Internal Revenue Code on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(e) *Last date prescribed for payment.*

(1) In determining the last date prescribed for payment, any extension of time granted for payment of tax shall be disregarded. The granting of an extension of time for the payment of tax does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. Thus, except as provided in paragraph (d) of this section, interest at the underpayment rate referred to in §70.93 of this part is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

(2) In the case of taxes payable by stamp and in all other cases where the last date for payment of the tax is not otherwise prescribed, such last date for the

purpose of the interest computation shall be deemed to be the date on which the liability for the tax arose. However, such last date shall in no event be later than the date of issuance of a notice and demand for the tax.

(26 U.S.C. 6601)

[T.D.ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-301, 55 FR 47613, Nov. 14, 1990]

§70.91 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to 26 U.S.C. 7405, shall bear interest at the underpayment rate referred to in §70.93 of this part.

(26 U.S.C. 6602)

[T.D. ATF-301, 55 FR 47614, Nov. 14, 1990]

§70.92 Interest on overpayments.

(a) *General rule.*

Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the overpayment rate referred to in §70.93 of this part from the date of overpayment of the tax.

(b) *Date of overpayment.*

Except as provided in section 6401(a) of the Internal Revenue Code, relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability.

(c) *Period for which interest is allowable in case of refunds.*

If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the regional director (compliance) or the Chief, Tax Processing Center which shall not be more than 30 days prior to the date of the refund check. The acceptance of a refund check shall not deprive the taxpayer of the right to make a claim for any additional overpayment and interest thereon, provided the claim is made within the applicable period of limitation. However, if a taxpayer does not accept a refund check, no additional interest on the amount of the overpayment included in such check shall be allowed.

(d) *Period for which interest allowable in case of credits--*

(1) *General rule.* If an overpayment of tax is credited, interest shall be allowed from the date of overpayment to the due date (as determined under paragraph (d)(2) of this section of the amount against which such overpayment is credited.

(2) *Determination of due date--*

(i) *General.*

The term *due date*, as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the regional director (compliance) or the Chief, Tax Processing Center makes demand for the payment of the tax. Therefore, the due date of the tax is the date fixed for the payment of the tax;

(ii) *Tax not due yet.* If a taxpayer agrees to the crediting of an overpayment against tax and the schedule of allowance is signed prior to the date on which such tax would otherwise become due, then the due date of such tax shall be the date on which such schedule is signed;

(iii) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues from any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(iv) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

(26 U.S.C. 6611)

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-301, 55 FR 47614, Nov. 14, 1990; T.D. ATF-358, 59 FR 29367, June 7, 1994]

§70.93 Interest rate.

(a) *In general.*

The interest rate established under 26 U.S.C. 6621(a)(2) shall be:

- (1) On amounts outstanding before July 1, 1975, 6 percent per annum.
- (2) On amounts outstanding:

After	And before	Rate per annum (percent)
June 30, 1975	Feb. 1, 1976	9
Jan. 31, 1976	Feb. 1, 1978	7
Jan. 31, 1978	Feb. 1, 1980	6
Jan. 31, 1980	Feb. 1, 1982	12
Jan. 31, 1982	Jan. 1, 1983	20

(3) On amounts outstanding after December 31, 1982, the adjusted rates for overpayment and underpayment established by the Commissioner of Internal Revenue under 26 U.S.C. 6621. These adjusted rates shall be published by the Commissioner in a Revenue Ruling. See §70.94 of this part for application of daily compounding in determining interest accruing after December 31, 1982. Because

interest accruing after December 31, 1982, accrues at the prescribed rate per annum compounded daily, the effective annual percentage rate of interest will exceed the prescribed rate of interest.

(b) *Applicability of interest rates.*

(1) *Computation.* Interest and additions to tax on any amount outstanding on a specific day shall be computed at the annual rate applicable on such day.

(2) *Additions to tax.* Additions to tax under any section of the Internal Revenue Code that refers to the annual rate established under 26 U.S.C. 6621, shall be computed at the same rate per annum as the interest rate set forth under paragraph (a) of this section.

(3) *Interest.* Interest provided for under any section of the Internal Revenue Code that refers to the annual rate established under this section, including 26 U.S.C. 6332(d)(1), 6343(c), 6601(a), 6602, 6611(a), 7426(g), and 28 U.S.C. 1961(c)(1) or 2411, shall be computed at the rate per annum set forth under paragraph (a) of this section.

[T.D. ATF-301, 55 FR 47614, Nov. 14, 1990]

§70.94 Interest compounded daily.

(a) *General rule.*

Effective for interest accruing after December 31, 1982, in computing the amount of any interest required to be paid under any provision of 26 U.S.C. or under 28 U.S.C. 1961(c)(1) or 2411, by the Director or by the taxpayer, or in computing any other amount determined by reference to such amount of interest, or by reference to the interest rate established under 26 U.S.C. 6621, such interest or such other amount shall be compounded daily by dividing such rate of interest by 365 (366 in a leap year) and compounding such daily interest rate each day.

(b) *Applicability to unpaid amounts on December 31, 1982.*

The unpaid interest (or other amount) that shall be compounded daily includes the interest (or other amount) accrued but unpaid on December 31, 1982.

(26 U.S.C. 6622)

[T.D. ATF-301, 55 FR 47614, Nov. 14, 1990]

Additions to the Tax, Additional Amounts, and Assessable Penalties

Additions to the Tax and Additional Amounts

§70.95 Scope.

For purposes of the administration of excise taxes by the Bureau of Alcohol, Tobacco and Firearms in accordance with Title 26 of the United States Code, the penalties prescribed in §§70.96 through 70.107 shall apply.

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-301, 55 FR 47614, Nov. 14, 1990]

§70.96 Failure to file tax return or to pay tax.

(a) *Addition to the tax--*

(1) *Failure to file tax return.* In the case of failure to file a return required under authority of:

- (i) Title 26 U.S.C. 61, relating to returns and records;
- (ii) Title 26 U.S.C. 51, relating to distilled spirits, wines and beer;
- (iii) Title 26 U.S.C. 52, relating to tobacco products, and cigarette papers and tubes; or
- (iv) Title 26 U.S.C. 53, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the regional director(s) (compliance) or the Chief, Tax Processing Center to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent thereof if the failure is not for more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under paragraph (a)(1) of this section shall be reduced by the amount of the addition under paragraph (a)(2) of this section for any month to which an addition to tax applies under both paragraphs (a)(1) and (a)(2) of this section.

(2) *Failure to pay tax shown on return.* In case of failure to pay the amount shown as tax on any return required to be filed after December 31, 1969 (without regard to any extension of time for filing thereof), specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director(s) (compliance) or the Chief, Tax Processing Center to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) *Failure to pay tax not shown on return.* In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to 26 U.S.C. 6213(b)) within 10 days from the date of the notice and demand therefor, there shall be added to the amount shown in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director(s) (compliance) or the Chief, Tax Processing Center to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than one month, with an

additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The maximum amount of the addition permitted under this subparagraph shall be reduced by the amount of the addition under paragraph (a)(1) of this section, which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days from the date of notice and demand. The preceding sentence applies to amounts assessed on or before December 31, 1986.

(4) *Increases in penalties in certain cases.* For increases in penalties for failure to file a return or pay tax in certain cases, see 26 U.S.C. 6651(d) or (f).

(b) *Month defined.*

(1) If the date prescribed for filing the return or paying tax is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file or pay tax continues shall constitute a month for purposes of section 6651.

(2) If the date prescribed for filing the return or paying tax is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return or paying tax, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(3) If a return is not timely filed or tax is not timely paid, the fact that the date prescribed for filing the return or paying tax, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(c) *Showing of reasonable cause.*

A taxpayer who wishes to avoid the addition to the tax for failure to file a tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for the taxpayers failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the regional director (compliance) of the region in which the taxpayer is located or with the Chief, Tax Processing Center. In addition, where special tax returns of liquor dealers are delivered to an ATF officer working under the supervision of the regional director (compliance), such statement may be delivered with the return. If the regional director (compliance) or Chief, Tax Processing Center determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the

taxpayer has made a satisfactory showing that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in 26 CFR 1.6161-1(b)) if paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of a tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of assets and anticipated income will be insufficient to pay the tax, has not exercised ordinary business care and prudence in providing for the payment of a tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of a tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay the tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if such taxpayer made reasonable efforts to conserve sufficient assets in marketable form to satisfy a tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

(d) *Penalty imposed on net amount due--*

(1) *Credits against the tax.* The amount of tax required to be shown on the return for purposes of section 6651(a)(1) and the amount shown as tax on the return for purposes of section 6651(a)(2) shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

(2) *Partial payments.*

(i) The amount of tax required to be shown on the return for purposes of section 6651(a)(2) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid after the date prescribed for payment and on or before the first day of such month, and

(ii) The amount of tax stated in the notice and demand for purposes of section 6651(a)(3) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the first day of such month.

(e) *No addition to tax if fraud penalty assessed.*

No addition to the tax under section 6651 of the Internal Revenue Code shall be assessed with respect to an underpayment of tax if an addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d) of the Internal Revenue Code.

§70.97 Failure to pay tax.

(a) *Negligence--*

(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of 5 percent of the underpayment, and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or if earlier, the date of the payment of the tax).

(2) Underpayment taken into account reduced by a portion attributable to fraud. There shall not be taken into account under paragraph (a) of this section any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under paragraph (b) of this section.

(3) *Negligence.* For purposes of paragraph (a) of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the term "disregard" includes any careless, reckless, or intentional disregard.

(4) The provisions of paragraph (a) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(b) *Fraud--*

(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) The provisions of paragraph (b) of this section, apply to returns the due date for which (determined without regard to extensions) is on or before December 31, 1986.

(c) *Fraud--*

(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of 75 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law

for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) Determination of portion attributable to fraud. If the regional director(s) (compliance) or the Chief, Tax Processing Center establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes is not attributable to fraud.

(3) The provisions of this paragraph (c) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(d) *Definition of underpayment.*

For purposes of this section, the term *underpayment* means the amount by which such tax imposed by the Internal Revenue Code exceeds the excess of--

(1) The sum of,

(i) The amount shown as the tax by the taxpayer upon the taxpayers return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a) of the Internal Revenue Code), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus;

(ii) Any amount, not shown on the return, paid in respect of such tax, over--

(2) *The amount of rebates made.* For purposes of paragraph (d) of this section, the term *rebate* means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (d)(1) of this section over the rebates previously made.

(e) *No delinquency penalty if fraud assessed.*

If any penalty is assessed under paragraph (b) or (c) of this section (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 of the Internal Revenue Code (relating to failure to file such return or pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(f) *Failure to pay stamp tax.*

Any person who willfully fails to pay any tax which is payable by stamp or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(g) *Additional penalty.*

For additional penalty for failure to pay certain liquor and tobacco taxes, see 27 CFR

70.102.

(26 U.S.C. 6653)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-353, 59 FR 2522, Jan. 18, 1994]

§70.98 Penalty for underpayment of deposits.

(a) *General rule.*

If any person is required by the provisions of 26 U.S.C. enforced and administered by the Bureau or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under 26 U.S.C. 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be:

- (1) For penalties assessed before October 22, 1986, 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues.
- (2) For penalties assessed after October 21, 1986, on deposits of taxes required to be made before January 1, 1990, 10 percent of the amount of the underpayment without regard to the period during which the underpayment continues.
- (3) For deposits of taxes required to be made after December 31, 1989.
 - (i) 2 percent of the amount of the underpayment if the failure is for not more than 5 days,
 - (ii) 5 percent of the amount of the underpayment if the failure is for more than 5 days but not more than 15 days,
 - (iii) 10 percent of the amount of the underpayment if the failure is for more than 15 days,
 - (iv) 15 percent of the amount of the underpayment if the tax is not deposited before the earlier of:
 - (A) The day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or
 - (B) The day on which notice and demand for immediate payment is given under 26 U.S.C. 6862 or the last sentence of 26 U.S.C. 6331(a).

For purposes of this section, the term "underpayment" means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(b) *Assertion of reasonable cause.*

To show that the underpayment was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made

under the penalties of perjury. The statement must be filed with the regional director (compliance) of the region in which the taxpayer is located or with the Chief, Tax Processing Center. If the regional director (compliance) or the Chief, Tax Processing Center determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

(26 U.S.C. 6656)

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-301, 55 FR 47615, Nov. 14, 1990; T.D. ATF-353, 59 FR 2523, Jan. 18, 1994]

§70.100 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal revenue tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, that person shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the regional director (compliance).

(26 U.S.C. 7304)

[T.D. ATF-301, 55 FR 47615, Nov. 14, 1990]

§70.101 Bad checks.

If any check or money order in payment of any amount receivable under Title 26 of the United States Code is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than \$500, the penalty under this section shall be \$5 or the amount of such check, whichever is the lesser. This section shall not apply if the person establishes to the satisfaction of the regional director (compliance) or the Chief, Tax Processing Center that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47615, Nov. 14, 1990]

§70.102 Coordination with title 11.

(a) *Certain failures to pay tax.*

No addition to the tax shall be made under section 6651 of the Internal Revenue Code for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code--

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) If such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee and

(i) The petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) The date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) *Exception for collected taxes.*

Paragraph (a) of this section shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(26 U.S.C. 6658)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.103 Failure to pay tax.

Whoever fails to pay any tax imposed by Part I of Subchapter A of Chapter 51 of the Internal Revenue Code (liquor taxes) or by Chapter 52 (tobacco taxes) at the time prescribed shall, in addition to any other penalty provided in the Internal Revenue Code, be liable to a penalty of 5 percent of the tax due but unpaid. For additional penalties for failure to pay tax, see 27 CFR 70.97.

(26 U.S.C. 5684(a) and 5761(b))

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Assessable Penalties

§70.111 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.*

The penalties and liabilities provided by Subchapter B, Chapter 68, of the Internal Revenue Code shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Internal Revenue Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by Subchapter B of Chapter 68.

(b) *Person defined.*

For purposes of Subchapter B of Chapter 68 of the Internal Revenue Code, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(26 U.S.C. 6671)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.112 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such

tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 of the Internal Revenue Code applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653 of the Internal Revenue Code, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

(26 U.S.C. 6672)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.113 Penalty for failure to supply taxpayer identification number.

(a) In general.

Except as provided in paragraph (b) of this section, any person who is required by the regulations under section 6109 of the Internal Revenue Code to include the taxpayer identification number in any return, statement, or other document, fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of \$50 for each such failure, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed \$100,000. For returns having a due date (determined without regard to extensions) after December 31, 1986, the total amount imposed on such person for all such failures during any calendar year shall not exceed \$100,000. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) Reasonable cause.

If any person who is required by the regulations under section 6109 of the Internal Revenue Code to supply a taxpayer identification number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the regional director (compliance) or the Chief, Tax Processing Center that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(c) Persons required to supply taxpayer identification numbers.

For regulations under section 6109 of the Internal Revenue Code relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

(26 U.S.C. 6723)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47615, Nov. 14, 1990]

§70.114 Penalties for aiding and abetting understatement of tax liability.

(a) Imposition of penalty.

Any person--

- (1) Who aids or assists in, procures, or advises with respect to, the preparation or

presentation of any portion of a return, affidavit, claim, or other document in connection with any matter arising under the internal revenue laws,

(2) Who knows that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) Who knows that such portion (if so used) will result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under paragraph (b).

(b) *Amount of penalty--*

(1) *General.* Except as provided in paragraph (b)(2) of this section, the amount of the penalty imposed by paragraph (a) of this section shall be \$1,000.

(2) *Corporations.* If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by paragraph (a) of this section shall be \$10,000.

(3) *Only one penalty per person per period.* If any person is subject to a penalty under paragraph (a) of this section with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under paragraph (a) of this section with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) *Activities of subordinates--*

(1) *General.* For purpose of paragraph (a) of this section, the term "procures" includes,

(i) Ordering (or otherwise causing) a subordinate to do an act, and

(ii) Knowing of, and not attempting to prevent, participation by a subordinate in an act.

(2) For purposes of paragraph (c)(1) of this section, the term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) *Taxpayer not required to have knowledge.*

Paragraph (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) *Certain actions not treated as aid or assistance.*

For purposes of paragraph (a)(1) of this section, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) *Penalty in addition to other penalties.*

The penalty imposed by this section shall be in addition to any other penalty provided by law.

(26 U.S.C. 6701)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Abatements, Credits and Refunds

Procedure in General

§70.121 Amounts treated as overpayments.

(a) The term *overpayment* includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.122 Authority to make credits or refunds.

The regional director (compliance) or the Chief, Tax Processing Center, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to 26 U.S.C. 6402 (c) and (d) and the regulations thereunder, to such person by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6402)

[T.D. ATF-301, 55 FR 47615, Nov. 14, 1990]

§70.123 Claims for credit or refund.

(a) Requirement that claim be filed.

(1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422 of the Internal Revenue Code, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) All claims relating to provisions of 26 U.S.C. enforced and administered by the Bureau, together with appropriate supporting evidence, shall be filed with the regional director (compliance), for the region in which the claimant is located, or, in the case of special (occupational) tax, with the Chief, Tax Processing Center. As to interest in the case of credits or refunds, see section 6611 of the Internal Revenue Code. See section 7502 for provisions treating timely mailing as timely

filing and section 7503 for time for filing claim when the last day falls on a Saturday, Sunday, or legal holiday.

(b) *Grounds set forth in claim.*

(1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the regional director (compliance) or the Chief, Tax Processing Center of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for the refund or credit.

(2) The regional director (compliance) and the Chief, Tax Processing Center do not have authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.*

All claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 2635 (5620.8).

(d) *Proof of representative capacity.*

If a return is filed by an individual and, after the individual's death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(e) *Mailing of refund check.*

(1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in paragraph (e)(2) of this section, the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing the attorney or agent to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the

counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see 31 U.S.C. 3727.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512-0141)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47615, Nov. 14, 1990]

§70.124 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayer's return, may exceed the amount of tax shown on the return. In any case in which the regional director (compliance) or the Chief, Tax Processing Center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the regional director (compliance) or the Chief, Tax Processing Center may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §70.123 of this part are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the regional director (compliance) or the Chief, Tax Processing Center fails to make such determination and credit or refund.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512-0141)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990]

§70.125 Abatements.

(a) The regional director (compliance) or the Chief, Tax Processing Center may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to ATF, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5020.8), Claim--Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. All such claims shall be filed with the ATF official who made demand for the amount assessed.

(c) The Director may issue uniform instructions to regional directors (compliance) and the Chief, Tax Processing Center authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

(Approved by the Office of Management and Budget under control number 1512-0141)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990]

§70.126 Date of allowance of refund or credit.

The date on which the regional director (compliance) or the Chief, Tax Processing Center, or an authorized certifying officer designated by the regional director (compliance) or the Chief, Tax Processing Center, first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990]

§70.127 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in §§70.122 to 70.124 of this part, inclusive.

(26 U.S.C. 6403)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990]

Rule of Special Application

§70.131 Conditions to allowance.

(a) For regulations under section 6416 of the Internal Revenue Code, see part 53 of this chapter, relating to manufacturers excise taxes on firearms and ammunition.

(b) For regulations under section 6423 of the Internal Revenue Code, see part 170 of this chapter, relating to distilled spirits, wine, and beer; and part 296 of this chapter, relating to tobacco products, and cigarette papers and tubes.

(26 U.S.C. 6416 and 6423)

[T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

Lien for Taxes

SOURCE: Sections 70.141 through 70.151 added by T.D. ATF-301, 55 FR 47616, Nov. 14, 1990, unless otherwise noted.

§70.141 Lien for taxes.

If any person liable to pay any tax under provisions of 26 U.S.C. enforced and administered by the Bureau neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of this section and §§70.161 and 70.162 of this part, any interest in restricted

land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(26 U.S.C. 6321)

§70.142 Scope of definitions.

Except as otherwise provided by §70.143 of this part, the definitions provided by §§70.143 apply for purposes of §70.142 through 70.149 and §§70.231 through 70.234 of this part.

§70.143 Definitions.

(a) *Security interest--*

(1) *In general.* The term *security interest* means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists any time:

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in paragraph (a)(2) of this section) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in paragraph (a)(3) of this section). For purposes of paragraph (a)(1) of this section, a contract right (as defined in §70.232(c)(2)(i) of this part) is in existence when the contract is made. An account receivable (as defined in §70.232(c)(2)(ii) of this part) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of paragraph (a) of this section, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of §70.145(a) of this part, a security interest must be in existence within the meaning of paragraph (a) of this section before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* For purposes of paragraph (a) of this section, a security interest is deemed to be protected against a subsequent judgment lien on:

(i) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(ii) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of paragraph (a)(2) of this section, the dates described in paragraphs (a)(2) (i) and (ii) of this section shall be determined without regard to any rule or principle of local law which permits the relation back or the making of any requisite action retroactive to a date earlier than the date on which the action is actually performed. For purposes of paragraph (a) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(3) *Money or money's worth.* For purposes of paragraph (a) of this section, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of paragraph (a) of this section, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see §70.232(e) of this part.

.(b) *Mechanic's lienor.*

The term *mechanic's lienor* means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of:

- (1) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or
- (2) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(c) *Motor vehicle.*

- (1) The term *motor vehicle* means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.
- (2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State, the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to the dealer, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.*

The term *security* means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or

receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.*

The term *tax lien filing* means the filing of notice of the lien imposed by 26 U.S.C. 6321 in accordance with §70.148 of this part.

(f) *Purchaser--*

(1) *In general.* The term *purchaser* means a person who, for adequate and full consideration in money or money's worth (as defined in paragraph (f)(3) of this section), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of paragraph (f) of this section, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

- (i) A lease of property,
- (ii) A written executory contract to purchase or lease property,
- (iii) An option to purchase or lease property and any interest therein, or
- (iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of paragraph (f) of this section, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of an obligation, such as the consideration in an installment purchase contract where the purchaser has not completed the installment payments.

(g) *Judgment lien creditor.*

The term *judgment lien creditor* means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is

not perfected with respect to real property until the time of such recordation or docketing. If, under local law, levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

(26 U.S.C. 6323)

§70.144 Special rules.

(a) *Actual notice or knowledge.*

For purposes of 26 U.S.C. 6321 through 6327, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation:*

Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by 26 U.S.C. 6321 or 6324. Thus, if a tax lien imposed by 26 U.S.C. 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(c) *Disclosure of amount of outstanding lien.*

If a notice of lien has been filed (see §70.148 of this part), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on ATF Form 5651.2 "Notice of Federal Tax Lien Under Internal Revenue Laws." The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make a request to the office of the Bureau named on the notice of lien with respect to which the request is made. The request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting the information.

(26 U.S.C. 6323)

§70.145 Purchasers, holders of security interests, mechanic's lienors, and

judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by 26 U.S.C. 6321 is not valid against any purchaser (as defined in §70.143(f) of this part), holder of a security interest (as defined in §70.143(a) of this part), mechanic's lienor (as defined in §70.143(b) of this part), or judgment lien creditor (as defined in §70.143(g) of this part) until a notice of lien is filed in accordance with §70.148 of this part. Except as provided by 26 U.S.C. 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with §70.148 of this part, the interest acquired by such person is subject to the lien imposed by 26 U.S.C. 6321.

(b) *Cross references.*

For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§70.232, 70.233, and 70.234 of this part, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see §70.146 of this part. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by 26 U.S.C. 6321, see §70.147 of this part. For provisions relating to certain other interests arising after tax lien filing, see §70.231 of this part.

(26 U.S.C. 6323)

§70.146 45-day period for making disbursements.

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.149 of this part, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is:

(a) In property which is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(b) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of paragraph (a) of this section, a contract right (as defined in §70.232(c)(2)(i) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if the contract has been made by such time. An account receivable (as defined in §70.232(c)(2)(ii) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of paragraph (b) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in §70.143(g) of this part. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See §70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax

lien filing," respectively. See §70.144(a) of this part for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(26 U.S.C. 6323)

§70.147 Priority of interest and expenses.

(a) *In general.*

If the lien imposed by 26 U.S.C. 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

- (1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,
- (2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,
- (3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,
- (4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,
- (5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and
- (6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by 26 U.S.C. 6321.

(b) *Collection expenses.*

The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of the holder's interest or to collect, by foreclosure or otherwise, the amount due the holder from the property subject to the protected holder's lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.*

The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.*

The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to the lien or security interest if both the lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of §70.144(b) of this part, to the rights of the holder of the sales tax lien, the holder of the lien or security interest will also be entitled to any additional protection afforded by 26 U.S.C. 6323(i)(2)

(26 U.S.C. 6323).

§70.148 Place for filing notice; form.

(a) *Place for filing.*

The notice of lien referred to in §70.145 of this part shall be filed as follows:

(1) *Under State laws--*

(i) *Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provision of paragraph (b)(2) of this section, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State.

(2) *With the clerk of the United States district court.* Whenever a State has not by law designated one office which meets the requirements of paragraph (a)(1) (i) or (ii) of this section, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of paragraph (a)(1)(i) of this section, if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all property located in such State, county or other governmental subdivision. A State has not by law designated one office meeting the requirements of paragraph (a)(1)(ii) of this section, if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by 26 U.S.C. 6321 is deemed situated, under the provision of

paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.*

For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) ***Real property.*** Real property is deemed situated at its physical location.

(2) ***Personal property.*** Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (b)(2) of this section, the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) ***Form--(1) In general.*** The notice referred to in §70.145 of this part shall be filed on ATF Form 5651.2, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notices contain a description of the property subject to the lien.

(2) ***ATF Form 5651.2 defined.*** The term "ATF Form 5651.2" generally means a paper form. However, if a State in which a notice referred to in §70.145 of this part is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium the term "ATF Form 5651.2" includes an ATF Form 5651.2 filed by the use of any electronic or magnetic medium permitted by that State. An ATF Form 5651.2 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

(26 U.S.C. 6323)

§70.149 Refiling of notice of tax lien.

(a) ***In general--(1) Requirement to refile.*** In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provision of paragraphs (b)(1) (i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b)(1)(ii) of this section (relating to a change of residence), the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) ***Effect of refiling.*** A timely refiled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* Except as provided below, if the Chief, Tax Processing Center or the regional director (compliance) fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the Chief, Tax Processing Center or the regional director (compliance) to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

- (i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or
- (ii) Property which has been levied upon by the United States prior to the expiration of the refiling period. However, if a suit or levy referred to in the preceding sentence is dismissed or released, respectively, and property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refiled, and if the lien remains in existence, the Bureau may nevertheless file a new lien either on the prescribed form for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of 26 U.S.C. 6323(f) and §70.148 of this part and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien--*

(1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (c) of this section) shall be effective only:

- (i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of 26 U.S.C. 6323; and
- (ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under paragraph (a)(1)(i) of this section is completed, the Bureau receives written information (in the manner described in paragraph (b)(2) of this section) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with 26 U.S.C. 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located in the District of Columbia or outside the United States, in the District of Columbia).

A notice of lien is considered as refiled in the office in which the prior notice or refiled notice was filed under the provisions of 26 U.S.C. 6323 if it is refiled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refiled notice was filed. If on or before the 90th day referred to in paragraph (b)(1)(ii) of this section, more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the

most recent date. Paragraph (b)(1)(ii) of this section is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under paragraph (b)(1)(i) of this section is completed.

(2) *Notice of change of taxpayer's residence--*

(i) *In general.* For purposes of this section, a notice of change of a taxpayer's residence will be effective only if it:

(A) Is received, in writing, from the taxpayer or the taxpayer's representative by the Chief, Tax Processing Center or the regional director (compliance) who filed the original notice of lien.

(B) Relates to an unpaid tax liability of the taxpayer, and

(C) States the taxpayer's name and the address of the taxpayer's new residence.

Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. A return or amended return filed by the taxpayer with the Bureau which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of the taxpayer's new residence, and the taxpayer's identifying number required by 26 U.S.C. 6109 is sufficient notice under this paragraph.

(ii) *Other rules applicable.* Except as provided in paragraph (b)(2)(i) of this section, no communication (either written or oral) to the Bureau will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Bureau has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Bureau without reference to the provisions of 26 U.S.C. 7502.

(c) *Required refiling period.*

For the purpose of this section, the term "required refiling period" means:

(1) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(2) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(26 U.S.C. 6323)

§70.150 Release of lien or discharge of property.

(a) *Release of lien.*

Generally, the Chief, Tax Processing Center is the ATF official charged with releasing liens or discharging property from liens, but whenever necessary to protect the interests of the government, a regional director (compliance) may also release a lien or discharge property from a lien, following the procedures set forth in this

section. The Chief, Tax Processing Center shall issue a certificate of release of a lien imposed with respect to any tax imposed by a provision of 26 U.S.C. enforced and administered by the Bureau, not later than 30 days after the day on which either:

(1) The Chief, Tax Processing Center finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the Chief, Tax Processing Center.

(2) The Chief, Tax Processing Center is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof and any expenses to which the Government has been put in the matter), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the Chief, Tax Processing Center and the taxpayer. For provisions relating to bonds, see 26 U.S.C. 7101 and 7102 and §§70.281 and 70.282 of this part.

(b) *Discharge of specific property from the lien--*

(1) *Property double the amount of the liability.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if the Bureau determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

(2) *Part payment; interest of United States valueless--(i) Part payment.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if there is paid over to the Bureau in partial satisfaction of the liability secured by the lien an amount determined by the Bureau to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the Chief, Tax Processing Center will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to the lien if the Bureau determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States.* For purposes of this paragraph (b)(2), in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the Chief, Tax Processing Center shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the Chief, Tax Processing Center may, in that official's discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if such part of the property is sold and, pursuant to a written agreement with the Chief, Tax Processing Center, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(c) *Subordination of lien--*

(1) *By payment of the amount subordinated.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if there is paid over to the Chief, Tax Processing Center an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to the Chief, Tax Processing Center after an application for a certificate of subordination is approved, the Chief, Tax Processing Center will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if the Chief, Tax Processing Center believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to lien and will facilitate the ultimate collection of the tax liability.

(3) *Application for certificate of subordination.* Any person desiring a certificate

of subordination under this paragraph shall submit an application therefor in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(d) *Nonattachment of lien.*

If the Chief, Tax Processing Center determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with §70.148 of this part refers to such person, the Chief, Tax Processing Center may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application therefor in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(e) *Effect of certificate--*

(1) *Conclusiveness.* Except as provided in paragraphs (e) (2) and (3) of this section, if a certificate is issued under 26 U.S.C. 6325 by the Chief, Tax Processing Center and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect:

- (i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;
- (ii) In the case of a certificate of discharge issued under paragraph (b) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;
- (iii) In the case of a certificate of subordination issued under paragraph (c) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and
- (iv) In the case of a certificate of nonattachment issued under paragraph (d) of this section, the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment--*

(i) *In general.*

If the Chief, Tax Processing Center determines that either:

- (A) A certificate of release or a certificate of nonattachment of the general tax lien imposed by 26 U.S.C. 6321 was issued erroneously or improvidently, or
- (B) A certificate of release of such lien was issued in connection with a compromise agreement under 26 U.S.C. 7122 which has been breached,

and if the period of limitation on collection after assessment of the tax liability has not expired, the Chief, Tax Processing Center may revoke the certificate and reinstate the tax lien.

(ii) *Method of revocation and reinstatement.* The revocation and reinstatement described in paragraph (e)(2)(i) of this section is accomplished by:

(A) Mailing notice of the revocation to the taxpayer at the taxpayer's last known address, and

(B) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement--*

(A) *Effective date.* A tax lien reinstated in accordance with the provisions of this paragraph (e)(2) is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of paragraph (e)(2)(ii)(A) of this section, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of paragraph (e)(2)(ii)(B) of this section, if the filing is required by reason of the fact that a notice of the lien had been filed.

(B) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by 26 U.S.C. 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the liability is satisfied or until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in §70.145 of this part until notice of the reinstated lien has been filed in accordance with the provisions of §70.148 of this part subsequent to or concurrent with the time the reinstated lien became effective.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of 26 U.S.C. subtitle F, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(f) *Filing of certificates and notices.*

If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by 26 U.S.C. 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

§70.151 Administrative appeal of the erroneous filing of notice of Federal tax lien.

(a) *In general.*

Any person may appeal to the official who filed the Federal tax lien on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying tax liability that led to the imposition of a lien.

(b) *Certificate of Release.*

If the official who filed the lien determines that the filing of the notice of any lien was erroneous that official shall expeditiously, and to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(c) *Appeal alleging an error in the filing of notice of lien.*

For purposes of paragraph (a) of this section, an appeal of the filing of notice of Federal tax lien must be based on any one of the following allegations:

- (1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;
- (2) The tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code); or
- (3) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of Federal tax lien.

(d) *Notice of Federal tax lien that lists multiple liabilities.*

When a notice of Federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of Federal tax lien was erroneously filed with respect to one or more liabilities listed in the notice, the official who filed the Federal tax lien shall issue a certificate of release with respect to such liabilities.

(e) *Procedures for appeal--*

- (1) *Manner.* An appeal of the filing of notice of Federal tax lien shall be made in writing to the official who filed the lien.
- (2) *Form.* The appeal shall include the following information and documents:
 - (i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of Federal tax lien;
 - (ii) A copy of the notice of Federal tax lien affecting the property, if available;

and

(iii) The grounds upon which the filing of notice of Federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (f) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the identity of the court, the district in which the bankruptcy petition was filed, a docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of Federal tax lien shall be made within 1 year after the taxpayer becomes aware of the erroneously filed tax lien.

(f) *Proof of full payment.*

As used in paragraph (e)(2)(iii)(A) of this section, the term "proof of full payment" means:

(1) A Bureau of Alcohol, Tobacco and Firearms receipt reflecting full payment of the tax liability in question prior to the date the Federal tax lien was filed;

(2) A cancelled check payable to the Bureau of Alcohol, Tobacco and Firearms in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the official who filed the lien.

(g) *Exception.*

Whenever necessary to protect the interests of the government, the regional director (compliance) of the region in which a notice of Federal tax lien was filed or the Chief, Tax Processing Center other than the official who filed the lien, may receive and act on an administrative appeal of a lien in accordance with this section.

(h) *Exclusive remedy.*

The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of Federal tax lien.

[T.D. ATF-316, 56 FR 55079, Oct. 24, 1991]

Seizure of Property for Collection of Taxes

§70.161 Levy and distraint.

(a) *Authority to levy--*

(1) *In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the regional director (compliance) or Chief, Tax Processing Center who initiated the assessment (or, on that official's request, any other regional director (compliance) or the Chief, Tax Processing Center) may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in §70.162(a) of this part. The regional director (compliance) or the Chief, Tax Processing Center may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The regional director (compliance) or the Chief, Tax Processing Center may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the tax. For exemption of certain property from levy, see 26 U.S.C. 6334 and §§70.241 through 70.245 of this part. As used in 26 U.S.C. 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see 26 U.S.C. 6323(i)(2) and §70.144 of this part concerning the subrogation rights of certain transferees. Levy may be made by serving a Notice of Levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. Except as provided in §70.162(c) of this part with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the regional director (compliance) or the Chief, Tax Processing Center until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made. For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made, including interest thereon to the date of surrender. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the regional director (compliance) or the Chief, Tax Processing Center finds that the collection of any tax is in jeopardy, that official may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in 26 U.S.C. 6331(a) or the 30-day period provided in 26 U.S.C. 6331(d).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership

proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation.--*

(i) *Federal employees.*

Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this paragraph, the term "employer" means:

(A) The officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or

(B) Any other officer or employee designated by the head of the branch, department, or agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made.

If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Director of the name and address of each officer or employee so designated and the scope or extent of the authority of such designee.

(ii) *State and municipal employees.* Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See 26 U.S.C. 6334(c).

(5) *Noncompetent Indians.* Solely for purposes of 26 U.S.C. 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(b) *Successive seizures.*

Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the regional director (compliance) or the Chief, Tax Processing Center may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other

property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by 26 U.S.C. 6321 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

(c) *Service of notice of levy by mail.*

A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certified or registered mail, return receipt requested, the date of delivery on the receipt is treated as the date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery. Any person may upon written notice to the Chief, Tax Processing Center or to the region director (compliance) having jurisdiction over such person, have all notices of levy by mail sent to one designated office. After such a notice is received by the Chief, Tax Processing Center or the regional director (compliance), notices of levy by mail will sent to the designated office until a written notice withdrawing the request or a written notice designating a difference office is received by the Chief, Tax Processing Center or the regional director (compliance).

(26 U.S.C. 6331 and 6332)

§70.162 Levy and distraint on salary and wages.

(a) *Notice of intent to levy.*

Levy may be made for any unpaid tax only after the regional director (compliance) or the Chief, Tax Processing Center has notified the taxpayer in writing of the intent to levy. The notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or be sent by certified or registered mail to the taxpayer's last known address, no less than 30 days before the day of levy. The notice of intent to levy is in addition to, and may be given at the same time as, the notice and demand described in §70.161 of this part.

(b) *Jeopardy.*

Paragraph (a) of this section does not apply to a levy if the regional director (compliance) or the Chief, Tax Processing Center has made a finding under §70.161(a)(2) of this part that the collection of tax is in jeopardy.

(c) *Continuing effect of levy on salary or wages.*

A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is released under 26 U.S.C. 6343 and §70.167 of this part. For this purpose, the term "salary or wages" includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. The levy attaches to both salary or wages earned but not yet paid at the time of the levy, and salary or wages earned and becoming payable (or paid in the form of an advance) subsequent to the date of the levy, until the levy is released pursuant to paragraph (d) of this

section. In general, salaries or wages that are the subject of a continuing levy, if not exempt from levy under 26 U.S.C. 6334(a) (8) or (9), become payable to the official who made the levy as the payor would otherwise be obligated to pay over the money to the taxpayer. For example, if the wage earner is paid on the Wednesday following the close of each workweek, a levy made upon the taxpayer's employer on any Monday would reach both the wages due for the prior workweek and the wages for succeeding workweeks as such wages become payable. In such a case the levy would be satisfied if the employer, on the first Wednesday after the levy and on each Wednesday thereafter, pays over to the official who made the levy wages which would otherwise be paid to the employee on such Wednesday, until the employer receives a notice of release from levy described in paragraph (d) of this section. See, however, §70.245(d) of this part for rules which permit a delayed payment to the official who made the levy in certain cases where amounts payable to the taxpayer are exempt from levy under 26 U.S.C. 6334 (a)(9) and (d).

(d) *Release and notice of release from levy.*

The official who made the levy will promptly release a continuing levy on salary or wages when the conditions of 26 U.S.C. 6343 are met. The official who made the levy will also promptly notify the person upon whom the levy was made that it has been released.

(26 U.S.C. 6331)

§70.163 Surrender of property subject to levy.

(a) *Requirement--*

(1) *In general.* Except as otherwise provided in 26 U.S.C. 6332, relating to levy in the case of banks or life insurance and endowment contracts, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall, upon demand of the official who made the levy, surrender the property or rights (or discharge the obligation) to the official who made the levy, except that part of the property or rights (or obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Property held by banks.*

(i) Any bank shall surrender any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(ii) Notwithstanding paragraph (a)(1) of this section, if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), the Director shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that the regional director (compliance) or the Chief, Tax Processing Center intends to reach such deposits. The notice of levy shall not specify that the regional director (compliance) or the Chief, Tax Processing Center intends to reach such deposits unless that official

believes:

(A) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(B) That the taxpayer is not within the jurisdiction of a U.S. court at the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau.

(b) *Enforcement of levy.*--

(1) *Extent of personal liability.* Any person who, upon demand of the regional director (compliance) or the chief, Tax Processing Center, fails or refuses to surrender any property or right to property subject to levy is liable in his/her own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interests. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under 26 U.S.C. 6221 from the date of the levy, or, in the case of a continuing levy on salary or wages (see 26 U.S.C. 6331(e)), from the date the person would otherwise have been obligated to pay over the wages or salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in paragraph (b)(1) of this section, any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under 26 U.S.C. 6332(d)(2). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy.*

Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the regional director (compliance) or the Chief, Tax Processing Center, surrenders the property or rights to property, or discharges the obligation, to that official, or who pays a liability described in paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer with respect to

the property or rights to property arising from the surrender or payment. If an insuring organization satisfies a levy with respect to a life insurance or endowment contract in accordance with §70.164 of this part, the insuring organization is discharged from any obligation or liability to any beneficiaries of the contract arising from the surrender or payment. Also, it is discharged from any obligation or liability to the insured or other owner. Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property. The owners of mistakenly surrendered property may, however, secure from the United States the administrative relief provided for in 26 U.S.C. 6343(b) or may bring suit to recover the property under 26 U.S.C. 7426.

(d) *Person defined.*

In addition to the definition given in §70.11 of this part, the term "person," as used in 26 U.S.C.A 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see §70.161(a)(4)(i) of this part.

(26 U.S.C. 6332)

§70.164 Surrender of property subject to levy in the case of life insurance and endowment contracts.

(a) *In general.*

This section provides special rules relating to the surrender of property subject to levy in the case of life insurance and endowment contracts. The provisions of §70.163 of this part which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy in the case of life insurance and endowment contracts.

(b) *Effect of service of notice of levy--*

(1) *In general.* A notice of levy served by a regional director (compliance) or the chief, Tax Processing Center on an insuring organization with respect to a life insurance or endowment contract issued by the organization shall constitute:

(i) A demand by the official who made the levy for the payment of the cash loan value of the contract adjusted in accordance with paragraph (c) of this section, and

(ii) The exercise of the right of the person against whom the tax is assessed to the advance of such cash loan value.

It is unnecessary for the official who made the levy to surrender the contract document to the insuring organization upon which the levy is made. However, the notice of levy will include a certification by the official who made the levy that a copy of the notice of levy

has been mailed to the person against whom the tax is assessed at that person's last known address. At the time of service of the notice of levy, the levy is effective with respect to the cash loan value of the insurance contract, subject to the condition that if the levy is not satisfied or released before the 90th day after the date of service, the levy can be satisfied only by payment of the amount described in paragraph (c) of this section. Other than satisfaction or release of the levy, no event during the 90-day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy. For example, the termination of the policy by the taxpayer or by the death of the insured during such 90-day period shall not release the levy. For the rules relating to the time when the insuring organization is to pay over the required amount, see paragraph (c) of this section.

(2) Notification of amount subject to levy--

(i) Full payment before the 90th day.

In the event that the unpaid liability to which the levy relates is satisfied at any time during the 90-day period subsequent to the date of service of the notice of levy, the official who filed the notice of levy will promptly give the insuring organization written notification that the levy is released.

(ii) Notification after the 90th day. In the event that notification is not given under paragraph (b)(2)(i) of this section, the official who filed the notice of levy will, promptly following the 90th day after service of the notice of levy, give the insuring organization written notification of the current status of all accounts listed on the notice of levy, and of the total payments received since service of the notice of levy. This notification will be given to the insuring organization whether or not there has been any change in the status of the accounts.

(c) Satisfaction of levy.

The levy described in paragraph (b) of this section with respect to a life insurance or endowment contract shall be deemed to be satisfied if the insuring organization pays over to the official who made the levy the amount which the person against whom the tax is assessed could have had advanced by the organization on the 90th day after service of the notice of levy on the organization. However, this amount is increased by the amount of any advance (including contractual interest thereon), generally called a policy loan, made to the person on or after the date the organization has actual notice or knowledge, within the meaning of 26 U.S.C. 6323(i)(1), of the existence of the tax lien with respect to which the levy is made. The insuring organization may, nevertheless, make an advance (including contractual interest thereon), generally called an automatic premium loan, made automatically to maintain the contract in force under an agreement entered into before the organization has such actual notice or knowledge. In any event, the amount paid to the Chief, Tax Processing Center by the insuring organization is not to exceed the amount of the unpaid liability shown on the notification described in paragraph (b)(2) of this section. The amount determined in accordance with the provisions of this section, subject to the levy, shall be paid to the Chief, Tax Processing Center by the insuring organization promptly after receipt of the notification described in paragraph (b)(2) of this section. The satisfaction of a levy with respect to a life insurance or endowment contract will not discharge the contract from the tax lien. However, see

26 U.S.C. 6323(b)(9)(C) and §70.231(i) of this part concerning the liability of an insurance company after satisfaction of a levy with respect to a life insurance or endowment contract. If the person against whom the tax is assessed so directs, the insuring organization, on a date before the 90th day after service of the notice of levy, may satisfy the levy by paying over an amount computed in accordance with the provisions of this subparagraph substituting such date for the 90th day. In the event of termination of the policy by the taxpayer or by the death of the insured on a date before the 90th day after service of the notice of levy, the amount to be paid over to the Chief, Tax Processing Center by the insuring organization in satisfaction of the levy shall be an amount computed in accordance with the provisions of this subparagraph substituting the date of termination of the policy or the date of death for the 90th day.

(d) *Other enforcement proceedings.*

The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of the person's unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.*

(1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to 26 U.S.C. 6332(b), see 26 U.S.C. 6323(b)(9) and §70.231(i) of this part.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see 26 U.S.C. 6325(b) and §70.150(b) of this part.

(26 U.S.C. 6332)

§70.165 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the ATF officer who has made or is about to make the levy, exhibit such books or records to such officer.

(26 U.S.C. 6333)

§70.167 Authority to release levy and return property.

(a) *Release of levy--*

(1) *Authority.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy upon all or part of the property or rights to property levied upon as provided in paragraphs (a) (2), (3) and (4) of this section.

Generally, the official who made the levy will receive and act on requests for release of a levy and return of property, but whenever necessary to protect the interests of the government, any regional director (compliance) or the Chief, Tax Processing Center may release a levy and return property seized by another ATF official. A levy may be released under paragraph (a)(3) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as a regional director (compliance) or the Chief, Tax Processing Center may require and if the regional director (compliance) or the Chief, Tax Processing Center determines that such action will facilitate the collection of the liability. A release pursuant to paragraph (a)(4) of this section is considered to facilitate the collection of the liability. The release under this section shall not operate to prevent any subsequent levy.

(2) *Conditions for mandatory release.*

(i) A regional director (compliance) or the Chief, Tax Processing Center shall release the levy as authorized under paragraph (a)(1) of this section, if any of the following conditions exist:

(A) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) Release of such levy will facilitate the collection of such liability,

(C) The taxpayer has entered into an agreement under 26 U.S.C. 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise (a regional director (compliance) or the Chief, Tax Processing Center is not required to release the levy in this case if release of such levy would jeopardize the secured creditor status of the United States).

(D) A regional director (compliance) or the Chief, Tax Processing Center has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(ii) In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the regional director (compliance) or the Chief, Tax Processing Center shall provide for an expedited determination under paragraph (a)(2)(i) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) *Conditions for discretionary release.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy as authorized under paragraph (a)(1) of this section, if:

(i) *Escrow arrangement.*

The delinquent taxpayer offers a satisfactory arrangement, which is accepted by a regional director (compliance) or the Chief, Tax Processing Center, for placing property in escrow to secure the payment of the liability (including the expenses of

levy) which is the basis of the levy.

(ii) *Bond*. The delinquent taxpayer delivers an acceptable bond to a regional director (compliance) or the Chief, Tax Processing Center conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in 26 U.S.C. 7101 and §70.281 of this part.

(iii) *Payment of amount of U.S. interest in the property*. There is paid to a regional director (compliance) or the Chief, Tax Processing Center an amount determined by ATF to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(iv) *Assignment of salaries and wages*. The delinquent taxpayer executes an agreement directing the taxpayer's employer to pay to a regional director (compliance) or the Chief, Tax Processing Center amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with a regional director (compliance) or the Chief, Tax Processing Center, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(v) *Extension of statute of limitations*.

The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with 26 U.S.C. 6502(a)(2) and §70.224 of this part.

(4) *Release where value of interest of United States is insufficient to meet expenses of sale*. A regional director (compliance) may release the levy as authorized under paragraph (a)(1) of this section if that official determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property.

(b) *Return of property--*

(1) *General rule*. If a regional director (compliance) or the Chief, Tax Processing Center determines that property has been wrongfully levied upon, the regional director (compliance) or the Chief, Tax Processing Center may return:

(i) The specific property levied upon,

(ii) An amount of money equal to the amount of money levied upon (together with interest thereon at the overpayment rate from the date ATF receives the money to a date not more than 30 days before the date of return), or

(iii) An amount of money equal to the amount of money received by the United States from a sale of the property (together with interest thereon at the overpayment rate from the date of the sale of the property to a date not more than 30 days before the date of return).

If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the

date of the levy. When a request described in paragraph (b)(2) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request. In cases where money is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, the money will be treated as specific property and, whenever possible, this specific property will be returned. For purposes of paragraph (b)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the regional director (compliance) before the sale or, if larger, the amount received by the United States from the resale of the property.

(2) *Request for return of property.* A written request for the return of property wrongfully levied upon shall be addressed to the official who authorized the levy. The written request shall contain the following information:

- (i) The name and address of the person submitting the request,
- (ii) A detailed description of the property levied upon,
- (iii) A description of the claimant's basis for claiming an interest in the property levied upon, and
- (iv) The name and address of the taxpayer, the originating ATF office, and the date of lien or levy as shown on the Notice of Tax Lien, Notice of Levy, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(3) *Inadequate request.* A request shall not be considered adequate unless it is a written request containing the information required by paragraph (b)(2) of this section. However, unless a notification is mailed by the official who received the request to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request shall be considered adequate. If the official who received the request timely notifies the claimant of the inadequacies of the request, the claimant shall have 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request shall be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under 26 U.S.C. 6532(c).

(26 U.S.C. 6343)

§70.168 Redemption of property.

(a) *Before sale.*

Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the regional director (compliance) at any time prior to the sale of the property. Upon such payment the regional director (compliance) shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease

from the time of such payment.

(b) *Redemption of real estate after sale--*

(1) *Period.* The owner of any real estate sold as provided in 26 U.S.C. 6335, the owner's heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case the purchaser cannot be found in the county in which the property to be redeemed is situated, then to the regional director (compliance) for the ATF region in which the property is situated, for the use of the purchaser, the purchaser's heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.*

When any real property is redeemed, the regional director (compliance) shall cause entry of the fact to be made upon the record of sale kept in accordance with 26 U.S.C. 6340 and §70.187 of this part, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the regional director (compliance) of the ATF region in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(26 U.S.C. 6337)

§70.169 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

§70.170 Application of proceeds of levy.

(a) *Collection of liability.*

Any money realized by proceedings under 26 U.S.C. 6331 through 6344, or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of 26 U.S.C. enforced and

administered by the Bureau), is applied in the manner specified in paragraphs (a)(1), (2), and (3) of this section. Money realized by proceedings under 26 U.S.C. 6331 through 6344, includes money realized by seizure, by sale of seized property, or by surrender under 26 U.S.C. 6332 except money realized by the imposition of a 50 percent penalty pursuant to 26 U.S.C. 6332(d)(2)).

(1) *Expense of levy and sale.* First, against the expenses of the proceedings or sale, including expenses allowable under 26 U.S.C. 6341 and amounts paid by the United States to redeem property.

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any provision of 26 U.S.C. which has not been paid, the amount remaining after applying paragraph (a)(1) of this section, shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed):

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (a)(1) and (2) of this section, shall then be applied against the liability in respect of which the levy was made or the sale of redeemed property was conducted.

(b) *Surplus proceeds.*

Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Chief, Tax Processing Center to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

(26 U.S.C. 6342)

Disposition of Property

SOURCE: Sections 70.181 through 70.188 added by T.D. ATF-301, 55 FR 47627, Nov. 14, 1990, unless otherwise noted.

§70.181 Disposition of seized property.

(a) *Notice of seizure.*

As soon as practicable after seizure of property, the ATF officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at the owner's usual place of abode or business, if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.*

(1) As soon as practicable after seizure of the property, the regional director

(compliance) shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at the owner's usual place of abode or business if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper published in the county wherein the seizure is made or in a newspaper generally circulated in that county. For example, if a newspaper of general circulation in a county but not published in that county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the county but no newspaper published within the county, the regional director (compliance) may cause public notice of the sale to be given in the newspaper of general circulation within the county. If there is no newspaper published or generally circulated in the county, the notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The regional director (compliance) may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in paragraph (b)(1) of this section, when the regional director (compliance) believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in 26 U.S.C. 6331(a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless 26 U.S.C. 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.*

The time, place, manner, and conditions of sale of property seized by levy shall be as follows:

(1) *Time and place of sale--(i) In general.*

The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under 26 U.S.C. 6335(b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the regional director (compliance) under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, the regional director (compliance) may order that the sale be held in such other place. The sale shall be held at the time and place stated in the notice of sale.

(ii) *Right to request sale of seized property within 60 days.* The owner of any property seized by levy may request that the regional director (compliance) sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The regional director (compliance) shall comply

with such request unless it is determined (and the owner is notified within such period) that such compliance would not be in the best interests of the United States.

(2) *Adjournment of sale.* When it appears to the regional director (compliance) that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the regional director (compliance) may adjourn, or cause the ATF officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.*

(i) Before the sale of property seized by levy, the regional director (compliance) shall determine:

(A) A minimum price, taking into account the expenses of levy and sale, for which the property shall be sold, and

(B) Whether the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared to be sold to the highest bidder. If no person offers for such property at the sale the amount of the minimum price and the regional director (compliance) has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price. If, at the sale, the property is not declared sold to the highest bidder or the United States, the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released to the owner under these circumstances shall remain subject to any lien imposed by 26 U.S.C. chapter 64, subchapter C.

(ii) The ATF officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property--*

(i) *Sale of indivisible property.*

If any property levied upon is not divisible, so as to enable the regional director (compliance) by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see 26 U.S.C. 6342(b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale:

(A) As separate items, or

(B) As groups of items, or

(C) In the aggregate, or

(D) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The regional director (compliance) shall select whichever of the foregoing methods of offering the property for sale as is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale "as is" and "where is" and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the ATF officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(A) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(B) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed 1 month from the date of the sale.

(5) *Method of sale.* The regional director (compliance) shall sell the property either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(A) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(B) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(C) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if the bid is \$200 or less. If the highest alternative bid submitted is more than \$200, the bidder shall remit 20 percent of the highest alternative bid or \$200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(D) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(E) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in paragraph (c)(4)(ii) of this section. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the ATF officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(F) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price.* All payments for property sold under this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any

bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the ATF officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in 26 U.S.C. 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the regional director (compliance), the sale may be declared by the regional director (compliance) to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in 26 U.S.C. 6335(b), (c), and (e) and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(26 U.S.C. 6335)

§70.182 Disposition of personal property acquired by the United States.

(a) *Sale--(1) In general.* Any personal property (except bonds, notes, checks, and other securities) acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the regional director (compliance) who acquired such property for the United States. United States saving bonds shall not be sold by the regional director (compliance), but shall be transferred to the appropriate office of the Treasury Department for redemption. Other bonds, notes, checks, and other securities shall be disposed

of in accordance with instructions issued by the Director.

(2) *Time, place, manner and terms of sale.* The time, place, manner and terms of sale of personal property acquired for the United States shall be as follows:

(i) *Time, notice, and place of sale.*

The property may be sold at any time after it has been acquired by the United States. A public notice of sale shall be posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the regional director (compliance) may use such other methods of advertising as the regional director (compliance) believes will result in obtaining the highest price for the property. The place of sale shall be within the region where the property was originally acquired by the United States. However, if the regional director (compliance) believes that a substantially higher price may be obtained, the sale may be held outside the region.

(ii) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with paragraph (a)(2)(i) of this section.

(iii) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed \$200.

(3) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than \$200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(i) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(ii) If the aggregate price of all property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The property may be sold either:

- (i) At public auction, at which open competitive bids shall be received, or
- (ii) At public sale under sealed bids.

(6) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.*

Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the ATF officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(7) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's or treasurer's check drawn on

any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the ATF officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (a)(5) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(8) *Delivery and removal of personal property.* The risk of loss is on the purchaser of the property upon acceptance of the purchaser's bid. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for the property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after acceptance of the bid shall be borne by the purchaser.

(9) *Certificate of sale.* The ATF officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price.

(b) *Accounting.*

In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections and there shall be rendered by the regional director (compliance) a distinct account of all charges incurred in such sale. For additional accounting rules, see 26 U.S.C. 7809.

(26 U.S.C. 7505)

§70.183 Administration and disposition of real estate acquired by the United States.

(a) *Persons charged with.*

The regional director (compliance) for the region in which the property is situated shall have charge of all real estate which has been or shall be assigned, set off, or otherwise conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under provisions of 26 U.S.C. enforced and administered by the Bureau or which has been or shall be vested in the United States by mortgage, or other security for payment of such debts, or which has been redeemed by the United States, or which has been or shall be acquired by the United States for payment of or as security for debts arising under provisions of 26 U.S.C. enforced and administered by the Bureau, and of all trusts created for the use of the United States in payment of such debts due the United States.

(b) *Sale.*

The regional director (compliance) for the region in which the property is situated may sell any real estate owned or held by the United States as aforesaid, subject to the following rules:

(1) *Property purchased at sale under levy.* If the property was acquired as a result of being declared purchased for the United States at a sale under 26 U.S.C. 6335, relating to sale of seized property, the property shall not be sold until after the expiration of 180 days after such sale under levy.

(2) *Notice of sale.* A notice of sale shall be published in some newspaper published or generally circulated within the county where the property is situated, or a notice shall be posted at the post office nearest the place where the property is situated and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner and conditions of sale. In addition, the regional director (compliance) may use other methods of advertising and of giving notice of the sale if the regional director (compliance) believes such methods will enhance the possibility of obtaining a higher price for the property.

(3) *Time and place of sale.* The time of the sale shall be not less than 20 days from the date of giving public notice of sale under paragraph (b)(2) of this section. The place of sale shall be within the county where the property is situated. However, if the regional director (compliance) believes a substantially better price may be obtained, the sale may be held outside such county.

(4) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must be given again in accordance with paragraph (b)(2) of this section.

(5) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed \$200.

(6) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than \$200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(7) *Terms.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(i) Payments in full upon acceptance of the highest bid, or

(ii) If the price of the property purchased by a successful bidder at the sale is more than \$200, an initial payment of \$200 or 20 percent of the purchase

price, whichever is the greater, and payment of the balance within a specified period, not to exceed one month from the date of the sale.

(8) *Method of sale.* The property may be sold either:

- (i) At public auction, at which open competitive bids shall be received, or
- (ii) At public sale under sealed bids.

(9) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph (b), shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is \$200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than \$200, 20 percent of such bid or \$200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid shall not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the ATF officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bid.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(10) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the ATF officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (b)(8) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(11) *Deed.* Upon payment in full of the purchase price, the regional director (compliance) shall execute a quitclaim deed to the purchaser.

(c) *Lease.*

Until real estate is sold, the regional director (compliance) for the region in which the property is situated may lease such property.

(d) *Release to debtor.*

In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon (at the rate of 1 percent per month), to the United States within 2 years from the date of the acquisition of such real estate, the regional director (compliance) for the region in which the property is located may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to the debtor's heirs or other legal representatives. If property is declared purchased by the United States under 26 U.S.C. 6335, then, for the purpose of this paragraph, the date of such declaration shall be deemed to be the date of acquisition of such real estate.

(e) *Accounting.*

The regional director (compliance) for the region in which the property is situated shall, in accordance with 26 U.S.C. 7809, account for the proceeds of all sales or leases of the property and all expenses connected with the maintenance, sale, or lease of the property.

(f) *Authority of Director.*

Notwithstanding the other paragraphs of this section, the Director may, when the Director deems it advisable, take charge of and assume responsibility for any real estate to which this section is applicable. In such case, the Director will notify in writing the regional director (compliance) for the region in which the property is situated. In any case where a single parcel of real estate is situated in more than one region, the Director may designate in writing a regional director (compliance) who shall have charge of and be responsible for the entire property.

§70.184 Disposition of perishable goods.

(a) *Appraisal of certain seized property.*

If the regional director (compliance) determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, the regional director (compliance) shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.*

If the owner of the property can be readily found, the regional director (compliance) shall give the owner written notice of the regional director (compliance)'s determination of the appraised value of the property. However, if the regional director (compliance) determines that the circumstances require immediate action, the regional director (compliance) may give the owner an oral notice of the determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner:

- (1) Pays to the regional director (compliance) an amount equal to the appraised value, or
- (2) Gives an acceptable bond as prescribed by 26 U.S.C. 7101 and §70.281 of this part. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the regional director (compliance) determines to be appropriate in the circumstances.

(c) *Immediate sale.*

If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) of this section within such time, the regional director (compliance) shall as soon as practicable make public sale of the property in accordance with the following terms and conditions:

- (1) ***Notice of sale.*** If the owner can readily be found, a notice shall be given to the owner. A notice of sale also shall be posted in two public places in the county which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The regional director (compliance) may give such other notice and in such other manner as the regional director (compliance) deems advisable under the circumstances.
- (2) ***Sale.*** The property shall be sold at public auction to the higher bidder.
- (3) ***Terms.*** The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made by cash, or by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession

of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(26 U.S.C. 6336)

§70.185 Certificate of sale; deed of real property.

(a) Certificate of sale.

In the case of property sold as provided in 26 U.S.C. 6335 (relating to sale of seized property), the regional director (compliance) shall give to the purchaser a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) Deed to real property.

In case of any real property sold as provided in 26 U.S.C. 6335 and not redeemed in the manner and within the time prescribed in 26 U.S.C. 6337, the regional director (compliance) shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) Deed to real property purchased by the United States.

If real property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335, the regional director (compliance) shall at the proper time execute a deed therefor and shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

(26 U.S.C. 6338)

§70.186 Legal effect of certificate of sale of personal property and deed of real property.

(a) Certificate of sale of property other than real property.

In all cases of sale pursuant to 26 U.S.C. 6335 of property (other than real property), the certificate of such sale.

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of the officer's proceedings in making the sale; and

(2) *As conveyance.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the

stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.*

In the case of the sale of real property pursuant to 26 U.S.C. 6335:

(1) *Deed as evidence.* The deed of sale given pursuant to 26 U.S.C. 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the regional director (compliance as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) *Effect of junior encumbrances.*

A certificate of sale of personal property given or a deed to real property executed pursuant to 26 U.S.C. 6338 discharges the property from all liens, encumbrances, and titles over which the lien of the United States, with respect to which the levy was made, has priority. For example, a mortgage on real property executed after a notice of a Federal tax lien has been filed is extinguished when the regional director (compliance) executes a deed to the real property to a purchaser thereof at a sale pursuant to 26 U.S.C. 6335 following the seizure of the property by the United States. The proceeds of such a sale are distributed in accordance with priority of the liens, encumbrances, or titles. *See* 26 U.S.C. 6342(b) and 7426(a)(2) and §§70.170 and 70.207(a)(2) of this part with respect to surplus proceeds.

(26 U.S.C. 6339)

§70.187 Records of sale.

(a) *Requirement.*

Each regional director (compliance) shall make a record of all sales under 26 U.S.C. 6335 of real property situated within that region and of redemptions of such property. The records shall set forth the tax for which any such sale was made, the dates of seizures and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed. In the case of redemption of the property, the records shall additionally set

forth the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid. The original record shall be retained by the Chief, Tax Processing Center.

(b) *Copy as evidence.*

A copy of such record, or any part thereof, certified by the Chief, Tax Processing Center shall be evidence in any court of the truth of the facts therein stated.

(26 U.S.C. 6340)

§70.188 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

Judicial Proceedings

Civil Action by the United States

SOURCE: Sections 70.191 through 70.193 added by T.D. ATF-301, 55 FR 47633, Nov. 14, 1990.

§70.191 Authorization.

(a) *In general.*

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be commenced unless the Director, Bureau of Alcohol, Tobacco and Firearms, or designated delegate, or the Chief Counsel for the Bureau, or designated delegate, directs that the action be commenced.

(b) *Property held by banks.*

The Director shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the Director believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or

obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

§70.192 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions.*

In any case where there has been a refusal or neglect to pay any tax (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the Director, Bureau of Alcohol, Tobacco and Firearms, or the Chief Counsel for the Bureau or designated delegate, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Director or the Chief Counsel for the Bureau during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States.*

If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 3715.

(26 U.S.C. 7403)

§70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7406)

Proceedings by Taxpayers and Third Parties

SOURCE: Sections 70.202 through 70.213 added by T.D. ATF-301, 55 FR 47634, Nov. 14, 1990.

§70.202 Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under provisions of 26 U.S.C. enforced and administered by the Bureau on the property which is the subject of such action or

suit. The provisions of 28 U.S.C. 2410 (except subsection (b)) and of 28 U.S.C. 1444 shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. If the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(26 U.S.C. 7424)

§70.203 Discharge of liens; scope and application; judicial proceedings.

(a) *In general.*

A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in 28 U.S.C. 2410 or in the manner prescribed in 26 U.S.C. 7425. Title 26 U.S.C. 7425(a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of 28 U.S.C. 2410. These judicial proceedings are plenary in nature and proceed on formal pleadings. Title 26 U.S.C. 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Title 26 U.S.C. 7425(c) contains special rules relating to the notice of sale requirements contained in 26 U.S.C. 7425(b).

(b) *Judicial proceedings--*(1) *In general.* Title 26 U.S.C. 7425(a) provides rules, where the United States is not joined as a party, to determine the effect of a judgment in any civil action or suit described in subsection (a) of 28 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of 26 U.S.C., the United States may claim the proceeds of the sale (exclusive of costs) prior to

the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

(26 U.S.C. 7425(a))

§70.204 Discharge of liens; nonjudicial sales.

(a) *In general.*

Title 26 U.S.C. 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to:

- (1) An instrument creating a lien on the property sold.
- (2) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or
- (3) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a "nonjudicial sale." The term "nonjudicial sale" includes, but is not limited to, the divestment of the taxpayer's interest in property which occurs by operation of law, by public or private sale, by forfeiture, or by termination under provisions contained in a contract for a deed or a conditional sales contract. Under 26 U.S.C. 7425(b)(1), if a notice of lien is filed in accordance with 26 U.S.C. 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale and the appropriate ATF official is not given notice of the sale (in the manner prescribed in §70.205 of this part), the sale shall be made subject to and without disturbing the lien or title of the United States. Under 26 U.S.C. 7425(b)(2)(C), in any case in which notice of the sale is given to the appropriate ATF official not less than 25 days prior to the date of sale (in the manner prescribed in 26 U.S.C. 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens or other titles derived from the enforcement of junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate ATF official. However, under the provisions of 26 U.S.C. 6325(b) and §70.150 of this part, designated ATF officers may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property.

(b) *Date of sale.*

In the case of a nonjudicial sale subject to the provisions of 26 U.S.C. 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

- (1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred.

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law. For provisions relating to the right of redemption of the United States, see 26 U.S.C. 7425(d) and §70.206 of this part.

(26 U.S.C. 7425(b))

§70.205 Discharge of liens; special rules.

(a) *Notice of sale requirements--*

(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of §70.204(b) of this part), to the Chief, Tax Processing Center. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale--*

(i) *Where notice of sale is given.*

In the event that notice of a sale is given in accordance with paragraph (a)(1) of this section, with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the Chief, Tax Processing Center, in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the postponement is made, the Bureau is considered to have notice of the postponement for the purpose of this paragraph (a)(2).

(ii) *Where notice of sale is not given.* In the event that:

(A) Notice of a nonjudicial sale would not be required under paragraph (a)(1) of this section, if the sale were held on the originally scheduled date,

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more

than 30 days before the date of the sale, notice of the sale is required to be given to the Chief, Tax Processing Center in accordance with the provisions of paragraph (a)(1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under 26 U.S.C. 7425(b).

(b) *Consent to sale--*

(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the Chief, Tax Processing Center consents to the sale of the property free of the lien or title. Pursuant to 26 U.S.C. 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the Chief, Tax Processing Center may, in that official's discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the Chief, Tax Processing Center may require. However, the Chief, Tax Processing Center may not consent to a sale of property under this section after the date of sale, as determined under §70.204(b) of this part. For provisions relating to the authority of the Chief, Tax Processing Center and the regional director (compliance) to release a lien or discharge property subject to a tax lien, *see* 26 U.S.C. 6325 and §70.150 of this part.

(2) *Application for consent.* Any person desiring the Chief, Tax Processing Center's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the Chief, Tax Processing Center a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods--*

(1) *In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the Chief, Tax Processing Center. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the Chief, Tax Processing Center asserts a claim to the proceeds within 30 days

after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the Chief, Tax Processing Center of the postponement. For provisions relating to the authority of the Chief, Tax Processing Center and the regional director (compliance) to release a lien or discharge property subject to a tax lien, see 26 U.S.C. 6325 and §70.150 of this part.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(d) *Forfeiture of land sales contract.*

For purposes of paragraph (a) of this section, a nonjudicial sale of property includes any forfeiture of a land sales contract.

(e) *Content of notice of sale--*

(1) *In general.* With respect to a notice of sale described in paragraph (a) or (c) of this section, the notice will be considered adequate if it contains the information described in paragraph (d)(1) (i), (ii), (iii), and (iv) of this section.

(i) The name and address of the person submitting the notice of sale;

(ii) A copy of each Notice of Federal Tax Lien (ATF Form 5651.2) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien:

(A) The initiating office named thereon,

(B) The name and address of the taxpayer, and

(C) The date and place of filing of the notice;

(iii) With respect to the property to be sold the following information:

(A) A detailed description, including location of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title),

(B) The date, time, place, and terms of proposed sale of the property, and

(C) In case of a sale of perishable property described in paragraph (c) of this section, a statement of the reasons why the property is believed to be perishable; and

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other

expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this section shall be considered inadequate by the Chief, Tax Processing Center. If the Chief, Tax Processing Center determines that the notice is inadequate, that official will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale, does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the Chief, Tax Processing Center may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the Chief, Tax Processing Center gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the Chief, Tax Processing Center may, in that official's discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates the person's name and address does not receive, more than 5 days prior to the date of the sale, written notification from the Chief, Tax Processing Center that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the Chief, Tax Processing Center with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the Chief, Tax Processing Center. The acknowledgment by the Chief, Tax Processing Center will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The Chief, Tax Processing Center is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section insofar as disclosure is authorized under 26 U.S.C. 6103. Any person desiring this information should submit to the Chief, Tax Processing Center a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

(26 U.S.C. 7425(c))

§70.206 Discharge of liens; redemption by United States.

(a) *Right to redeem--*(1) *In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax

lien, the regional director (compliance) may redeem the property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under 26 U.S.C. 7425(d) even though the Chief, Tax Processing Center has consented to the sale under 26 U.S.C. 7425(c)(2) and §70.205(b) of this part. For purposes of this section, the term "nonjudicial sale" shall have the same meaning as used in §70.204(a) of this part.

(2) *Redemption period.* For purposes of this section, the redemption period shall be:

- (i) The period beginning with the date of the sale (as determined under §70.204(b)) and ending with the 120th day after such date, or
- (ii) The period for redemption of real property allowable with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later.

Which ever period is applicable, 26 U.S.C. 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from tax lien (whether by reason of local law or the provisions of 26 U.S.C. 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Bureau is not entitled to a notice of sale under 26 U.S.C. 7425(b) and §70.205 of this part, the United States does not have a right of redemption under 26 U.S.C. 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded similar creditors under the local law of the place in which the property is situated.

(b) *Amount to be paid--(1) In general.* In any case in which a regional director (compliance) exercises the right to redeem real property under 26 U.S.C. 7425(d), the amount to be paid is the sum of the following amounts:

- (i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);
- (ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under §70.204(b) of this part) to the date of redemption;
- (iii) The amount, if any, equal to the excess of the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and the purchaser's successor in interest, if any) over the income from such property realized by the purchaser (and the purchaser's successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or the purchaser's successor in interest or is rented at less than its reasonable rental value); and

(iv) The amounts, if any, of a payment made by the purchaser or the purchaser's successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.*

(i) The actual amount paid for property by a purchaser, other than holder of the lien being foreclosed, is the amount paid by the purchaser at the sale. For purposes of this paragraph, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of:

(A) The amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and

(B) Any additional amount bid and paid at the sale.

For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by the purchaser is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed which is legally satisfied by reason of the sale or in the amount bid and paid at the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentences, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due the holder, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived the holder's right to a deficiency judgment prior to the

foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser.*

(i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under paragraph (b)(3) of this section. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or the purchaser's successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or the purchaser's successor in interest furnishes the written itemized statement within 15 days after the request is made by the regional director (compliance), it shall be presumed that no amount is payable for expenses in excess of income and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or the purchaser's successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the regional director (compliance), or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the regional director (compliance) of a written itemized statement submitted by the purchaser or the purchaser's successor in interest or the resolution of the disagreement as to the amount properly payable for excess expenses.

(4) *Payments made by purchaser or the purchaser's successor in interest to a senior lienor.*

(i) The amount to be paid upon a redemption by the United States shall include the amount of a payment made by the purchaser or the purchaser's successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section.

This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a payment by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or the purchaser's successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) shall, in any case where a redemption is contemplated, send notice to the purchaser (or the purchaser's successor in interest of record) by certified or registered mail or hand delivery of the right under paragraph (b)(4) of this section to request reimbursement (payable in the event the right to redeem under 26 U.S.C. 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the regional director (compliance) is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of:

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the regional director (compliance), and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the property from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, a regional director (compliance) may, in that official's discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or the purchaser's successor in interest on account of a payment made to a senior lienor if the right to redeem under 26 U.S.C. 7425(d) is exercised. A waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the regional director (compliance) shall, by certified or registered mail or hand delivery, return to the purchaser or the purchaser's successor any waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph

(b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the regional director (compliance) sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request of 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or the purchaser's successor and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for amounts described in paragraph (b)(4) of this section may, in the discretion of the regional director (compliance), be made after the redemption upon the resolution of the disagreement as to the amount properly payable under paragraph (b)(1)(iv) of this section.

(c) *Certificate of redemption--*

(1) *In general.* If a regional director (compliance) exercises the right of redemption of the United States described in paragraph (a) of this section, the regional director (compliance) shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the regional director (compliance) is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The regional director (compliance) shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the regional director (compliance) to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the regional director (compliance) and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the regional director (compliance) shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to paragraph (c)(1) of this section, shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the regional director (compliance) redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes the title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the regional director (compliance) shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon

the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in 26 U.S.C. 7425(b) and §70.204 of this part, which real property is subject to the right of redemption of the United States described in this section, the regional director (compliance) may, in that official's discretion, release the right of redemption with respect to the property. The application for the release shall be submitted in writing to a regional director (compliance) and shall contain such information as the regional director (compliance) may require. If the regional director (compliance) determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

(26 U.S.C. 7425(d))

§70.207 Civil actions by persons other than taxpayers.

(a) *Actions permitted--*

(1) *Wrongful levy.* If a levy has been made on property, or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim:

(i) That the person has an interest in, or a lien on, such property which is senior to the interest of the United States; and

(ii) That such property was wrongfully levied upon.

No action is permitted under 26 U.S.C. 7426(a)(1) unless there has been a levy upon the property claimed.

(2) *Surplus proceeds.* If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon the claim that the person:

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds.* Any person who claims to be legally entitled to all or any part of the amount which is held as a fund from the sale of property pursuant to an agreement described in 26 U.S.C. 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by 26 U.S.C. 7426(b)(4). It is not necessary that the claimant be a party to the agreement which provides for the substitution of the sale proceeds for the property subject to the lien.

(b) *Adjudication--*

(1) *Wrongful levy*. If the court determines that property has been wrongfully levied upon, the court may:

(i) Grant an injunction to prohibit the enforcement of such levy or to prohibit a sale of such property if such sale would irreparably injure rights in the property which are superior to the rights of the United States in such property; or

(ii) Order the return of specific property if the United States is in possession of such property; or

(iii) Grant a judgment for the amount of money levied upon, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date that the official who made the levy receives the money wrongfully levied upon to the date of payment of such judgment, or

(iv) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property (which, in the case of property declared purchased by the United States at a sale, shall be the greater of the minimum amount determined pursuant to 26 U.S.C. 6335(e) or the amount received by the United States from the resale of such property), or the fair market value of such property immediately before the levy, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date of the sale of the property to the date of payment of such judgment.

For purposes of paragraph (b)(1) of this section, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if the levy is upon property exempt from levy under 26 U.S.C. 6334, or the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under 26 U.S.C. 6323 or 6324(a)(2) or (b), or the levy or sale pursuant to levy will or does effectively destroy or otherwise irreparably injure such person's interest in the property which is senior to the Federal tax lien. A levy may be wrongful against a holder of a senior lien upon the taxpayer's property under certain circumstances although legal rights to enforce the holder's interest survive the levy procedure. For example, the levy may be wrongful against such a person if the property is an obligation which is collected pursuant to the levy rather than sold and nothing thereafter remains for the senior lienholder, or the property levied upon is of such a nature that when it is sold at a public sale the property subject to the senior lien is not available for the senior lienholder as a realistic source for the enforcement of the holder's interest. Some of the factors which should be taken into account in determining whether property remains or will remain a realistic source from which the senior lienholder may realize collection are: The nature of the property, the number of purchasers, the value of each unit sold or to be sold, whether, as a direct result of the distraint sale, the costs of realizing collection from the security have or will be so substantially increased as to render the security substantially valueless as a source of collection, and whether the property subject to the distraint sale constitutes substantially all of the property available as security for the payment of the indebtedness to the senior lienholder.

(2) *Surplus proceeds*. If the court determines that the interest or lien of any party

to an action under 26 U.S.C. 7426 was transferred to the proceeds of a sale of the property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The term "surplus proceeds" means property remaining after application of the provisions of 26 U.S.C. 6342(a).

(3) *Substituted sale proceeds.* If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in 26 U.S.C. 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(26 U.S.C. 7426)

§70.208 Review of jeopardy assessment or jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under 26 U.S.C. 6862 or when a levy is made less than 30 days after the notice and demand described in 26 U.S.C. 6331(a), the official who authorized the assessment or levy shall provide the taxpayer a written statement setting forth the information upon which that official relies in authorizing such assessment or levy.

(26 U.S.C. 7429(a)(1))

§70.209 Review of jeopardy assessment or levy procedures; administrative review.

(a) Request for administrative review.

Any request for the review of a jeopardy assessment or levy provided for by 26 U.S.C. 7429(a)(2) shall be filed with the official who authorized the assessment or levy, within 30 days after the statement described in §70.208 of this part is given to the taxpayer. However, if no statement is given within the 5-day period described in §70.208, any request for review of the jeopardy assessment shall be filed within 35 days after the date the assessment is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the reviewing official to make the redetermination described in 26 U.S.C. 7429(a)(3).

(b) Administrative review.

In determining whether the assessment or levy is reasonable and the amount assessed appropriate, the reviewing official shall take into account not only information available at the time the assessment is made but also information which subsequently becomes available.

(26 U.S.C. 7429(a)(2))

§70.210 Review of jeopardy assessment or levy procedures; judicial action.

(a) Time for bringing judicial action.

An action for judicial review described in 26 U.S.C. 7429(b) may be instituted by the

taxpayer during the period beginning on the earlier of:

(1) The date of the reviewing official notifies the taxpayer of the determination described in 26 U.S.C. 7429(a)(3); or

(2) The 16th day after the request described in 26 U.S.C. 7429(a)(2) was made by the taxpayer; and ending on the 90th day thereafter.

(b) Extension of the period for judicial review. The U.S. Government may not seek an extension of the 20-day period described in 26 U.S.C. 7429(b)(2), but it may join with the taxpayer in seeking such an extension.

(26 U.S.C. 7429)

§70.213 Repayments to officers or employees.

The Director is authorized to repay to any officer or employee of the Bureau the full amount of such sums of money as may be recovered against such officer or employee in any court for any taxes imposed under provisions of 26 U.S.C. enforced and administered by the Bureau collected by such officer or employee with the cost and expense of suit, and all damages and costs recovered against any officer or employee of the Bureau in any suit brought against such officer or employee by reason of anything done in the official performance of duties under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7423)

Limitations

Limitations on Assessment and Collection

§70.221 Period of limitations upon assessment.

(a) The amount of any tax imposed by the Internal Revenue Code (other than a tax collected by means of stamps) shall be assessed within 3 years after the return was filed. For rules applicable in cases where the return is filed prior to the due date thereof, see section 6501(b) of the Internal Revenue Code. In the case of taxes payable by stamps, assessment shall be made at any time after the tax becomes due and before the expiration of 3 years after the date on which any part of the tax was paid. For exceptions and additional rules, see subsections (b) and (c) of section 6501 of the Internal Revenue Code.

(b) No proceeding in court without assessment for the collection of any tax shall be begun after the expiration of the applicable period for the assessment of such tax.

(26 U.S.C. 6501)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.222 Time return deemed filed for purposes of determining limitations.

(a) *Early Return.*

Any return filed prior to the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day.

(b) *Returns executed by regional directors (compliance) or other ATF officers.*

The execution of a return by a regional director (compliance) or other authorized officer or employee of the Bureau of Alcohol, Tobacco and Firearms under the authority of section 6020(b) of the Internal Revenue Code shall not start the running of the statutory period of limitations on assessment and collection.

(26 U.S.C. 6501)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.223 Exceptions to general period of limitations on assessment and collection.

(a) *False return.*

In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax.*

In the case of a willful attempt in any manner to defeat or evade any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return.*

In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return.

(d) *Extension by agreement.*

The time prescribed by 26 U.S.C. 6501 for the assessment of any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance) or the Chief, Tax Processing Center. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(26 U.S.C. 6501)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47641, Nov. 14, 1990; T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

§70.224 Collection after assessment.

(a) *Length of period--*

(1) *General rule.* In any case in which a tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court to collect such tax may be begun, or levy for the collection of such tax may be

made, within 6 years after the assessment thereof.

(2) *Extension by agreement.*

(i) The 6-year period of limitation on collection after assessment of any tax may, prior to the expiration thereof, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance). Whenever necessary to protect the revenue, the Chief, Tax Processing Center may also execute a written agreement with the taxpayer to extend the period of limitation. The extension shall become effective upon execution of the agreement by both the taxpayer and the regional director (compliance) or the Chief, Tax Processing Center.

(ii) The period of limitation on collection after assessment of any tax (including any extension of such period) may be extended after the expiration thereof if there has been a levy on any part of the taxpayer's property prior to such expiration and if the extension is agreed upon in writing prior to a release of the levy under the provisions of 26 U.S.C. 6343. An extension under this paragraph has the same effect as an agreement made prior to the expiration of the period of limitation on collection after assessment, and during the period of the extension collection may be enforced as to all property or rights to property owned by the taxpayer whether or not seized under the levy which was released.

(iii) Any period agreed upon under the provisions of paragraph (a)(1) of this section may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) *Date when levy is considered made.*

The date on which a levy on property or rights to property is made is the date on which the notice of seizure provided in 26 U.S.C. 6335(a) is given.

(26 U.S.C. 6502)

[T.D. ATF-301, 55 FR 47641, Nov. 14, 1990]

§70.225 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.

Where all or substantially all of the assets of a taxpayer are in the control or custody of the court in any proceeding before any court of the United States, or any State of the United States, or the District of Columbia, the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 is suspended with respect to the outstanding amount due on the assessment for the period such assets are in the control or custody of the court, and for 6 months thereafter.

(26 U.S.C. 6503)

[T.D. ATF-301, 55 FR 47642, Nov. 14, 1990]

§70.226 Suspension of running of period of limitation; taxpayer outside of United States.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) is suspended for the period during which the taxpayer is absent from the United States if such period is a continuous period of absence from the United States extending for 6 months or more. In a case where the running of the period of limitations has been suspended under the first sentence of this paragraph and at the time of the taxpayer's return to the United States the period of limitations would expire before the expiration of 6 months from the date of the taxpayer's return, the period of limitations shall not expire until after 6 months from the date of the taxpayer's return. The taxpayer will be deemed to be absent from the United States for purposes of this section if the taxpayer is generally and substantially absent from the United States, even though the taxpayer makes casual temporary visits during the period.

(26 U.S.C. 6503)

[T.D. ATF-301, 55 FR 47642, Nov. 14, 1990]

§70.227 Suspension of running of period of limitation; wrongful seizure of property of third party.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) shall be suspended for a period equal to a period beginning on the date property (including money) is wrongfully seized or received by a regional director (compliance) and ending on the date 30 days after the date on which the regional director (compliance) returns the property pursuant to 26 U.S.C. 6343(b) (relating to authority to return property) or the date 30 days after the date on which a judgment secured pursuant to 26 U.S.C. 7426 (relating to civil actions by persons other than taxpayers) with respect to such property becomes final. The running of the period of limitations on collection after assessment shall be suspended under this section only with respect to the amount of such assessment which is equal to the amount of money or the value of specific property returned.

(26 U.S.C. 6503)

[T.D. ATF-301, 55 FR 47642, Nov. 14, 1990]

LIMITATIONS ON LIENS

SOURCE: Sections 70.231 through 70.234 added by T.D. ATF-301, 55 FR 47642, Nov. 14, 1990, unless otherwise noted.

§70.231 Protection for certain interests even though notice filed.

(a) *Securities.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid with respect to a security (as defined in §70.143(d) of this part) against:

- (1) A purchaser (as defined in §70.143(f) of this part) of the security who at the time of purchase did not have actual notice or knowledge (as defined in §70.144(a) of this part) of the existence of the lien;

(2) A holder of a security interest (as defined in §70.143(a) of this part) in the security who did not have actual notice or knowledge (as defined in §70.144(a) of this part) of the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth (as defined in §70.143(a) of this part); or

(3) A transferee of an interest protected under paragraph (a) (1) or (2) of this section to the same extent the lien is invalid against the transferor to the transferee. For purposes of this paragraph, no person can improve that person's position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

(b) *Motor vehicles--*

(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against a purchaser (as defined in §70.143(f) of this part) of a motor vehicle (as defined in §70.143(c) of this part) if:

(i) At the time of purchase, the purchaser did not have actual notice or knowledge (as defined in §70.144(a) of this part) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, the purchaser has acquired actual possession of the motor vehicle and has not thereafter relinquished actual possession to the seller or seller's agent.

(2) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by 26 U.S.C. 6321 may not be valid against the purchaser of tangible personal property (including a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail--*

(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) in accordance with §70.148 of this part, the lien is not valid against a purchaser (as defined in §70.143(f) of this part) of tangible personal property purchased at a retail sale (as defined in paragraph (c)(2) of this section) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(2) *Definition of retail sale.* For purposes of paragraph (c) of this section, the term "retail sale" means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

(d) *Personal property purchased in casual sale--*

(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against a purchaser (as defined in §70.143(f) of this part) of household goods, personal effects, or other tangible personal property of a type described in §70.241 of this part (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than \$250 (excluding interest and expenses described in §70.147 of this part). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in §70.144(a) of this part):

- (i) Of the existence of the tax lien, or
- (ii) That the sale is one of a series of sales.

For purposes of paragraph (d)(2)(ii) of this section, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of the seller's household goods, personal effects, and other tangible personal property described in §70.241 of this part.

(e) *Personal property subject to possessory liens.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile mechanic the right to retain possession of an automobile the mechanic has repaired as security for payment of the repair bill and the mechanic retains continuous possession of the automobile until such lien is satisfied, a tax lien filed in accordance with 26 U.S.C 6323(f)(1) which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien was filed before the mechanic undertook the work or that the mechanic knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against the holder of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of:

- (1) A tax of general application levied by any taxing authority based upon the value of the property, or
- (2) A special assessment imposed directly upon the property by any taxing

authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(3) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements.*

Even though a notice of lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against a mechanic's lienor (as defined in §70.143(b) of this part) who holds a lien for the repair or improvement of a personal residence if:

(1) The residence is occupied by the owner and contains no more than four dwelling units, and

(2) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in §70.147 of this part) is not more than \$1,000. For purposes of this paragraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the \$1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes the work or that the contractor knew of the lien before undertaking the work.

(h) *Attorney's liens--*

(1) *In general.* Even though notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's service for litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes the work or that the attorney knows of the tax lien before undertaking the work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In case of suits against the taxpayer, see §70.150(d)(2) of this part for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to:

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United

States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States, or

(ii) Any amount credited against any liability of the taxpayer in accordance with 26 U.S.C. 6402.

(i) *Certain insurance contracts.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) is filed in accordance with §70.148 of this part, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time:

(1) Before the insuring organization has actual notice or knowledge (as defined in §70.144(a) of this part) of the existence of the tax lien.

(2) After the insuring organization has actual notice or knowledge of the lien (as defined in §70.144(a) of this part) with respect to advances (including contractual interest thereon as provided in §70.147(a) of this part) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(3) After the satisfaction of a levy pursuant to 26 U.S.C. 6332(b), unless and until the Chief, Tax Processing Center delivers to the insuring organization a notice (for example, another notice of levy, a letter, *etc.*), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in paragraph (i)(3) of this section may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

(j) *Passbook loans--*

(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid against an institution described in 26 U.S.C. 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in paragraph (j)(2) of this section) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in §70.144(a) of this part) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook.* For purposes of paragraph (j) of this section, the term "passbook" includes:

- (i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and
- (ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(26 U.S.C. 6323)

§70.232 Protection for commercial transactions financing agreements.

(a) *In general.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid with respect to a security interest which:

- (1) Comes into existence after the tax lien filing.
- (2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and
- (3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See §70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in §70.143(g) of this part.

(b) *Commercial transactions financing agreement.*

For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of such person's trade or business:

- (1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of the taxpayer's trade or business, or
- (2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of the taxpayer's trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before the 46th day after the date of tax lien filing or the time when the lender or purchaser has actual notice or knowledge (as defined in §70.144(a) of this part) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of its customers, the manufacturer is considered to engage in such financing in the course of its trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of the disbursement made before the 46th

day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security*--

(1) *In general.* The term "commercial financing security" means:

- (i) Paper of a kind ordinarily arising in commercial transactions,
- (ii) Accounts receivable (as defined in paragraph (c)(2) of this section),
- (iii) Mortgages on real property, and
- (iv) Inventory.

For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in paragraph (c)(2) of this section), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage when the taxpayer is the mortgagor of realty owned by the taxpayer. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) *Definitions.* For purposes of §§70.143 and 70.146 of this part, and this section:

- (i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and
- (ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.*

For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before the lender

received the actual notice or knowledge. An account receivable (as defined in paragraph (c)(2)(ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when the taxpayer obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to the taxpayer. A contract right (as defined in paragraph (c)(2)(i) of this section) is acquired by a taxpayer when the contract is made. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.*

A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

(26 U.S.C. 6323)

§70.233 Protection for real property construction or improvement financing agreements.

(a) *In general.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid with respect to a security interest which:

- (1) Comes into existence after the tax lien filing,
- (2) Is on qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and
- (3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See §70.143 (a) and (e) of this part for general definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in §70.143(g) of this part.

(b) *Real property construction or improvement financing agreement.*

For purposes of this section, the term "real property construction or improvement financing agreement" means any written agreement to make cash disbursements

(whether or not at the option of the party agreeing to make such disbursements):

- (1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;
- (2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or
- (3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of paragraphs (b) (1) and (2) of this section, construction or improvement may include demolition. For purposes of any agreement described in paragraph (b)(3) of this section, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.*

For purposes of this section, the term "qualified property" includes only:

- (1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;
- (2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or
- (3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, the farm crop raised or harvested, or the livestock or other animals raised.

(26 U.S.C. 6323)

§70.234 Protection for obligatory disbursement agreements.

(a) *In general.*

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with §70.148 of this part, the lien is not valid with respect to security interest which:

- (1) Comes into existence after the tax lien filing,
- (2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and
- (3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See §70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien creditor as defined in §70.143(g) of this part.

(b) *Obligatory disbursement agreement.*

For purposes of this section, the term "obligatory disbursement agreement" means a written agreement, entered into by a person in the course of the person's trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes the obligation other than in the course of the endorser's trade or business.

(c) *Qualified property.*

Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing and, to the extent that the acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.*

Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including:

- (1) The proceeds of the contract the performance of which was insured, and
- (2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(26 U.S.C. 6323)

Limitations on Levies

SOURCE: Sections 70.241 through 70.245 added by T.D. ATF-301, 55 FR 47646, Nov. 14, 1990, unless otherwise noted.

§70.241 Property exempt from levy.

(a) *Enumeration.*

There shall be exempt from levy:

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of the taxpayer's family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of the taxpayer's family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$1,650 in value. For purposes of this provision, an individual who is the only remaining member of a family and who lives alone is not the head of a family.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate \$1,100 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to that individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(6) *Certain annuity and pension payments.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. chapter 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. chapter 11), special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under 10 U.S.C. chapter 73.

(7) *Workmen's compensation.* Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the day of levy, to contribute to the support of such taxpayer's minor children, so much of the taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Chief, Tax Processing Center is not required to release a levy until such time as that official is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The Chief, Tax Processing Center may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other

income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the Chief, Tax Processing Center. Where the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the Chief, Tax Processing Center be allocated entirely to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income.

(9) *Minimum exemption for wages, salary, and other income.* Amounts payable to or received by the taxpayer as wages or salary for personal services, or as other income, to the extent provided in §§70.242 through 70.245 of this part.

(10) *Certain service-connected disability payments.* Any amount payable to an individual as a service-connected (within the meaning of 38 U.S.C. 101(16)) disability benefit under:

(i) 38 U.S.C. chapter 11, subchapter II, III, IV, V, or VI, or

(ii) 38 U.S.C. chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 shall be exempt from levy.

(11) *Certain public assistance payments.* Any amount payable to an individual as a recipient of public assistance under:

(i) Title 42 U.S.C. subchapter IV (relating to aid to families with dependent children) or 42 U.S.C. subchapter XVI (relating to supplemental security income for the aged, blind, and disabled), or

(ii) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test shall be exempt from levy.

(12) *Assistance under job training partnership act.* Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) from funds appropriated pursuant to such Act shall be exempt from levy.

(13) *Principal residence exempt in absence of certain approval or jeopardy.* Except to the extent provided in §70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.

(b) *Appraisal.*

The ATF officer seizing property of the type described in 26 U.S.C. 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.*

No other property or rights to property are exempt from levy except the property specifically exempted by 26 U.S.C. 6334(a). No provisions of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead

exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

(26 U.S.C. 6334)

§70.242 Wages, salary and other income.

(a) *In general.*

Under 26 U.S.C. 6334(a)(9) and (d) certain amounts payable to or received by a taxpayer as wages, salary or other income are exempt from levy. This section described the income of a taxpayer that is eligible for the exemption from levy (paragraph (b) of this section) and how exempt amounts are to be paid to the taxpayer (paragraph (c) of this section). Section 70.243 of this part describes the sum which will be exempt from levy for each of the taxpayer's payroll periods. Payroll periods are described in §70.244 of this part. Amounts exempt from levy are determined in part by the number of persons claimed by the taxpayer as dependents. Section 70.245 of this part describes the manner in which the taxpayer is to claim any dependent exemptions and the manner in which the employer is to compute the exempt amount and pay the balance to the Chief, Tax Processing Center.

(b) *Eligible taxpayer income.*

Only wages, salary or other income payable to the taxpayer after the levy is made on the payor may be exempt from levy under 26 U.S.C. 6334 (a)(9). No amount of wages, salary or other income which is paid to the taxpayer before levy is made on the payor will be so exempt from levy.

(c) *Payment of exempt amounts to taxpayer--*

(1) *From wages, salary or other income not subject to levy.* In the case of a taxpayer who has more than one source of wages, salary or other income, the Chief, Tax Processing Center may elect to levy on only one or more such source while leaving other sources of salary or other income free from levy. If those wages, salary or other income which the Chief, Tax Processing Center leaves free from levy equal or exceed the amount to which the taxpayer is entitled as an exemption from levy under 26 U.S.C. 6334(a)(9) and (d) and §70.243 of this part (and are not otherwise exempt), then no amount of the taxpayer's wages, salary or other income on which the Chief, Tax Processing Center elects to levy is exempt from levy. The Chief, Tax Processing Center shall notify the employer or other person subject to levy that no amount of the taxpayer's wages, salary or other income is exempt from levy.

(2) *From wages, salary or other income subject to levy.* If the taxpayer's income upon which the Chief, Tax Processing Center does not levy is less than that amount to which the taxpayer is entitled as an exemption, then an amount determined pursuant to §70.243 of this part is to be paid to the taxpayer from those wages, salary or other income which are subject to levy. The Chief, Tax Processing Center will designate those wages, salary or other income subject to levy from which such amount will be paid to the taxpayer. The Chief, Tax Processing Center will generally make this designation by delivering to the employer, or other person levied upon, the form upon which the taxpayer is to claim any dependent exemption. The form will accompany the notice of levy. The

person receiving the form from the Chief, Tax Processing Center must promptly deliver it to the taxpayer. In the case of some employers having a large number of employees, however, the Chief, Tax Processing Center will send the form upon which an employee is to claim any dependent exemption directly to the employee. In such a case, the notice of levy will indicate that the form for claiming dependent exemptions has been sent to the taxpayer. If a notice of levy is not accompanied by the form for claiming dependent exemptions and does not indicate that the form was sent directly to the taxpayer, then the person levied upon must make payment to the Chief, Tax Processing Center without regard to amounts prescribed by §70.243 of this part as exempt from levy. If a notice of levy is accompanied by the form for claiming dependent exemptions or indicates that the form was sent directly to the taxpayer, then the person levied upon is to pay over to the taxpayer, amounts determined to be exempt from levy pursuant to §70.243 and §70.245 (b) and (c) of this part (relating to the requirement that the taxpayer submit a claim for any dependent exemption). Amounts not exempt from levy are to be paid to the Chief, Tax Processing Center in accordance with the terms of the levy.

(26 U.S.C. 6334)

§70.243 Exempt amount.

Amount payable to the taxpayer as wages, salary, or other income for each payroll period described in §70.244 of this part are exempt from levy as follows:

- (a) If the payroll period is weekly, an amount equal to:
 - (1) The sum of:
 - (i) The standard deduction, and
 - (ii) The aggregate amount of the deductions for personal exemption allowed the taxpayer under 26 U.S.C. 151 in the taxable year in which such levy occurs, divided by
 - (2) 52.
- (b) If the payroll period is not weekly, the amount exempt from levy shall be an amount which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as such individual would have under paragraph (a) of this section if (during such period of time) the individual were paid or received such wages, salary or other income on a regular weekly basis.

(26 U.S.C. 6334)

§70.244 Payroll period.

For purpose of determining the amount of wages, salary or other income exempt from levy under 26 U.S.C. 6334(a)(9):

- (a) *Regularly used calendar periods.*

In the case of wages, salary or other income paid to the taxpayer on the basis of an established calendar period regularly used by the employer or other person levied upon for payroll or payment purpose (e.g., daily, weekly, biweekly, semimonthly, or

monthly), that period is the taxpayer's payroll period.

(b) *Amounts paid on recurrent but irregular basis.*

In the case of wages, salary, or other income paid to the taxpayer on a recurrent but irregular basis, the first day of the taxpayer's payroll period is that day following the day upon which the wages, salary, or other income were last paid to the taxpayer. The last day of the payroll period is that day upon which the current payment becomes payable to him or her. However, in any case in which:

- (1) Amounts are paid to the taxpayer on a recurrent but irregular basis, and
- (2) the last payment was paid to the taxpayer more than 60 days before the current payment becomes payable, the current payment will be deemed a one-time payment (*see* paragraph (c) of this section).

(c) *Nonrecurrent payments.*

In the case of wages, salary or other income paid to the taxpayer on a one-time basis, the taxpayer's payroll period is deemed to be weekly (*i.e.*, the 1-week period ending on the day of payment).

(26 U.S.C. 6334)

§70.245 Computation of exempt amount and payment of amounts not exempt from levy to the Chief, Tax Processing Center.

(a) *General.*

Unless advised by the Chief, Tax Processing Center that no part of the money due to the taxpayer is exempt from levy, the employer or other person levied upon will compute the exempt amount, using the formula in §70.243 of this part and the taxpayer's statement of exemptions and filing status described in paragraph (b) of this section.

(b) *Statement of exemptions and filing status.*

Unless the taxpayer submits a statement of exemptions and filing status to the employer or other person levied upon, the exempt amount will be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption. A statement of exemptions and filing status shall be made by either:

- (1) Completion of the form provided for this purpose by the Bureau, or
- (2) A written statement that:
 - (i) Gives the taxpayer's filing status for income tax purposes,
 - (ii) Shows any additional standard deduction if the taxpayer or the taxpayer's spouse is at least 65 and/or blind,
 - (iii) Identified by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed,
 - (iv) Is signed by the taxpayer, and

(v) Contains a declaration that it is made under the penalties of perjury.

(c) Time for submission of statement.

The taxpayer must submit the statement of exemptions and filing status to the employer or other person levied upon no later than the later of:

- (1) The third day before the last day of the payroll period for which the exemption is claimed (that is, the third day before payday), or
- (2) If the Chief, Tax Processing Center delivers the forms for the statement of exemption and filing status to the employer or other person levied upon (see §70.242(c)(2) of this part), the second day after the date the taxpayer receives the form.

For purposes of paragraphs (c) (1) and (2) of this section, the term "day" does not include Saturdays, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503. Failure on the part of the taxpayer to submit a timely statement of exemptions and filing status will result in the computation of the exempt amount as if the taxpayer were a married individual filing a separate return with only 1 personal exemption for the applicable pay period, except that the employer or other person levied upon may accept a statement of exemptions and filing status not timely submitted in accordance with this paragraph, and may prepare a disbursement to the taxpayer based upon the information properly verified therein, if payment to the Chief, Tax Processing Center in accordance with the levy is not thereby delayed.

(d) Payment of amounts not exempt from levy to the Chief, Tax Processing Center--

- (1) *In General.* Wages, Salary, or other income the subject of a levy are payable to the Chief, Tax Processing Center on the date the payor is otherwise obligated to pay the taxpayer (*see* §70.242(c) of this part).
- (2) *Delayed payment in certain cases.* If, however, as described in paragraph (c)(2) of this section, the taxpayer may submit a statement of exemptions and filing status after the third day before payday, amounts payable to the taxpayer on that payday, to the extent not exempt from levy, are payable to the Chief, Tax Processing Center on the third day following the date on which the taxpayer may timely submit the statement of exemptions and filing status under paragraph (c)(2) of this section. For purposes of this rule, the term "day" does not include Saturday, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503.

(26 U.S.C. 6334)

Periods of Limitation in Judicial Proceedings

§70.251 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

- (1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

- (2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by a regional director (compliance) or the Chief, Tax Processing Center, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.
- (b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by a regional director (compliance) or the Chief, Tax Processing Center.
- (c) The taxpayer may sign a waiver of the requirement that the taxpayer be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this section on the date the waiver is filed. The waiver shall set forth:
- (1) The type of tax and the taxable period covered by the taxpayer's claim for refund;
 - (2) The amount of the claim;
 - (3) The amount of the claim disallowed;
 - (4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing, by either registered or certified mail, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a) of the Internal Revenue Code.

(26 U.S.C. 6532)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47648, Nov. 14, 1990]

§70.252 Periods of limitaion on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 of the Internal Revenue Code unless such action is begun within 2 years after the

making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

(26 U.S.C. 6532)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.253 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule.*

No suit or proceeding, except as otherwise provided in 26 U.S.C. 6532(c)(2) and paragraph (b) of this section, under 26 U.S.C. 7426 and §70.207 of this part relating to civil actions by persons other than taxpayers, shall be begun after the expiration of 9 months from the date of levy or agreement under 26 U.S.C. 6325(b)(3) giving rise to such action.

(b) *Period when claim is filed.*

The 9-month period described in 26 U.S.C. 6532(c)(1) and paragraph (a) of this section shall be extended to the shorter of

(1) 12 months from the date of filing by a third party of a written request under §70.67(b)(2) of this part for the return of property wrongfully levied upon, or

(2) 6 months from the date of mailing by registered or certified mail by the regional director (compliance) to the party claimant of a notice of disallowance of the part of the request to which the action relates. A request which, under §70.67(b)(3) of this part, is not considered adequate does not extend the 9-month period described in paragraph (a) of this section.

(26 U.S.C. 6532)

[T.D. ATF-301, 55 FR 47648, Nov. 14, 1990]

Limitations on Credit or Refund

§70.261 Period of limitation on filing claim.

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) and (c) of section 6511 of the Internal Revenue Code. For rules as to

time return is deemed filed and tax considered paid, see section 6513 of the Internal Revenue Code.

(26 U.S.C. 6511)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.262 Limitations on allowance of credits and refunds.

(a) *Effect of filing claim.*

Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.*

In the case of any tax (other than a tax payable by stamp):

(1) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(2) If a return was filed, and a claim is filed after the 3 year period described in paragraph (b)(1) of this section, but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(3) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(4) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) shall not exceed the amount that would have been allowable under the preceding subparagraphs if a claim had been filed on the date the credit or refund is allowed.

(c) *In the case of a tax payable by stamp.*

(1) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(2) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) or the Chief, Tax Processing Center shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(26 U.S.C. 6511)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47648, Nov. 14, 1990]

§70.263 Special rules applicable in case of extension of time by agreement.

(a) *Scope.*

If, within the period prescribed in section 6511(a) of the Internal Revenue Code for the filing of a claim for credit or refund, an agreement extending the period for assessment of a tax has been made in accordance with the provisions of section 6501(c)(4) of the Internal Revenue Code, the special rules provided in this section become applicable. This section shall not apply to any claim filed, or credit or refund allowed if no claim is filed, either (1) prior to the execution of an agreement extending the period in which assessment may be made, or (2) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(b) *Period in which claim may be filed.*

Claim for credit or refund of an overpayment may be filed, or credit or refund may be allowed if no claim is filed, at any time within which an assessment may be made pursuant to an agreement, or any extension thereof, under section 6501(c)(4), and for 6 months thereafter.

(c) *Limit on amount to be credited or refunded.*

(1) If a claim is filed within the time prescribed in paragraph (b) of this section, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(2) If no claim is filed, the amount of credit or refund allowed or made within the time prescribed in paragraph (b) of this section shall not exceed the portion of the tax paid after the execution of the agreement and before the making of the credit or refund, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(d) *Effective date of agreement.*

The agreement referred to in this section shall become effective when signed by the taxpayer and the regional director (compliance).

(26 U.S.C. 6511)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.264 Time return deemed filed and tax considered paid.

For purposes of section 6511 of the Internal Revenue Code, a return filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b) (2) and (c), payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(26 U.S.C. 6513)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.265 Credits or refunds after period of limitation.

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 of the Internal Revenue Code for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532(a) for the filing of suit, unless prior to the expiration of such period, suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405 of the Internal Revenue Code.

(26 U.S.C. 6514)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.266 Credit against barred liability.

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

(26 U.S.C. 6514)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Transferees

§70.271 Procedure in the case of transferred assets.

(a) *Method of collection.*

(1) The liability, at law or in equity, of a transferee of property of any person liable in respect of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, in any case where the liability of the transferee arises on the liquidation of a corporation or partnership, or a corporate reorganization within the meaning of 26 U.S.C. 368(a), shall be assessed against such transferee and paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which such liability is incurred, except as hereinafter provided.

(2) *Applicable provisions.* The provisions of 26 U.S.C. made applicable by 26 U.S.C. 6901(a) to the liability of a transferee referred to in paragraph (a)(1) of this section, include the provisions relating to:

(i) Delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency;

(ii) The authorization of distraint and proceedings in court for collection; and

(iii) The prohibition of claims and suits for refund.

For detailed provisions relating to assessments, collections, and refunds, see 26 U.S.C. chapters 63, 64, and 65, respectively.

(b) *Definition of transferee.*

As used in this section, the term "transferee" includes the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in 26 U.S.C. 368, and all other classes of distributees.

(c) *Period of limitations on assessment.*

The period of limitations for assessment of the liability of a transferee is as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, 1 year after the expiration of the period of limitations for assessment against the transferor.

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, 1 year after the expiration of the period of limitations for assessment against the preceding transferee, or 3 years after the expiration of the period of limitations for assessment against the taxpayer, whichever of such periods first expires.

(3) *Court proceeding against taxpayer or last preceding transferee.* If, before the expiration of the period specified in paragraph (c)(1) or (2) of this section, (whichever is applicable), a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the commencement of such proceeding, then within 1 year after the return of execution in such proceeding.

(d) *Extension by agreement--*

(1) *Extension of time for assessment.* The time prescribed by 26 U.S.C. 6901 for the assessment of the liability of a transferee may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the transferee and the regional director (compliance) or the Chief, Tax Processing Center. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) *Extension of times for credit or refund.*

(i) For the purposes of determining the period of limitations on credit or refund to the transferee of overpayments made by such transferee or overpayments made by the taxpayer to which such transferee may be legally entitled to credit or refund, an agreement and any extension thereof referred to in paragraph (d)(1) of this section, shall be deemed an agreement and extension thereof for purposes of 26 U.S.C. 6511(c) (relating to limitations on credit or refund in case of extension of time by agreement).

(ii) For the purpose of determining the limit specified in 26 U.S.C. 6511(c)(2) on the amount of the credit or refund, if the agreement is executed after the expiration of the period of limitations for assessment against the taxpayer with reference to whom the liability of such transferee arises, the periods specified in 26 U.S.C. 6511(b)(2) shall be increased by the period from the date of such expiration to the date the agreement is executed.

(e) *Period of assessment against taxpayer.*

For the purpose of determining the period of limitations for assessment against a transferee, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitations for assessment against the taxpayer shall be the period that would be in effect had the termination of existence not occurred.

(26 U.S.C. 6901)

[T.D. ATF-301, 55 FR 47648, Nov. 14, 1990]

Bonds

§70.281 Form of bond and security required.

(a) *In general.*

Any person required to furnish a bond under the provisions of this part shall execute such bond:

- (1) On the appropriate form prescribed by the Bureau (which may be obtained from the regional director (compliance) or the Chief, Tax Processing Center), and
- (2) With satisfactory surety.

For provisions as to what will be considered "satisfactory surety", see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety--*

(1) *Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in by 31 U.S.C. 9303.

(2) *Other surety acceptable in discretion of ATF officials.* Unless otherwise expressly provided in 26 U.S.C. or this part, a bond may, in the discretion of the regional director (compliance) or the Chief, Tax Processing Center, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in paragraph (b)(1) of this section, it is:

- (i) Executed by a corporate surety (other than a surety company) provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;
 - (ii) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in paragraph (b)(3) of this section;
 - (iii) Secured by a mortgage on real or personal property;
 - (iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express or telegraph money order;
 - (v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or
 - (vi) Secured by any other acceptable collateral. Collateral shall be deposited with the regional director (compliance) or the Chief, Tax Processing Center or, in that official's discretion, with a responsible financial institution acting as escrow agent.
- (3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

- (i) The surety must reside within the State in which the principal place of business or legal residence of the primary obligor is located;
- (ii) The surety must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;
- (iii) All real property which the surety offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;
- (iv) The surety must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the official with whom the bond is filed; and
- (v) The surety must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of the security, executed on the appropriate form furnished by the regional director (compliance) or the Chief, Tax Processing Center.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

- (4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(26 U.S.C. 7101)

[T.D. ATF-301, 55 FR 47649, Nov. 14, 1990]

§70.282 Single bond in lieu of multiple bonds.

In the case of bonds required under this part, a single bond will not be accepted in lieu of two or more bonds.

(26 U.S.C. 7102)

[T.D. ATF-301, 55 FR 47650, Nov. 14, 1990]

Miscellaneous Provisions

SOURCE: Sections 70.301 through 70.306 added by T.D. ATF-301, 55 FR 47650, Nov. 14, 1990, unless otherwise noted.

§70.301 Reproduction of returns and other documents.

(a) *In general.*

The Director may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter required under the provisions of 26 U.S.C. enforced and administered by the Bureau, and make reproductions from such films and photoimpressions.

(b) *Safeguards--*

(1) *By private contractor.* Any person entering into a contract with the Bureau for the performance of any of the services described in paragraph (a) of this section shall agree to comply, and to assume responsibility for compliance by that person's employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or that person's responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Bureau that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Bureau by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency.* Any Federal agency entering into a contract with the Bureau for the performance of any services described in paragraph (a) of this

section, shall treat as confidential all material processed or reproduced pursuant to such contract.

(3) *Inspection.* The Bureau shall have the right to send its officers and employees into the office and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions.* For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, *see* 26 U.S.C. 7213(c).

(26 U.S.C. 7513)

§70.302 Fees and costs for witnesses.

(a) *Introduction.*

Title 26 U.S.C. 7610 provides that the Bureau may make payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and §70.22 of this part. Under 26 U.S.C. 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in 26 U.S.C. 7610 and definitions of other terms used in the regulations under 26 U.S.C. 7610 (a) and (b); and paragraphs (c) and (d) of this section contain rules and rates applicable to payments under 26 U.S.C. 7610.

(b) *Definitions--*

(1) *Directly incurred costs.* Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments--*

(1) *Basis for payment.* Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for those costs both directly incurred and reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Bureau employee before whom the third party was summoned. If a third party charges any other person for any cost for which the third party is seeking payment from the Bureau, the amount charged to the other person must be subtracted from the amount the Bureau must pay.

(2) *Payment rates.* The following rates are established.

(i) *Search costs.*

(A) For the total amount of personnel time required to locate records or information, \$8.50 per person hour.

(B) For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies, except that personnel time for computer search is payable only under paragraph (c)(2)(i)(A) of this section.

(ii) *Reproduction costs.*

(A) For copies of documents \$.20 per page.

(B) For photographers, films and other materials, actual cost, except that personnel time is payable only under paragraph (a)(2)(i)(A) of this section.

(iii) *Transportation costs.* For transportation costs, actual cost, except that personnel time is payable only under paragraph (c)(2)(i)(A) of this section.

(d) *Appearance fees and allowances--*

(1) *In general.* Under 26 U.S.C. 7610(a)(1) and this paragraph, the Bureau shall pay a summoned person certain fees and allowances. No payments will be made until after the party summoned appears and has submitted any necessary receipts or other evidence of costs to the Bureau employee before whom the

person was summoned.

(2) *Attendance fees.* A summoned person shall be paid an attendance fee for each day's attendance. A summoned person shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is the higher of \$30 per day or the amount paid under 28 U.S.C. 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(3) *Travel allowances.* A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for official travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum allowance prescribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. An alien who has been paroled into the United States by the Attorney General, under 8 U.S.C. 1182(d)(5)(A), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under 8 U.S.C. 1252(b) to be deportable, shall be ineligible to receive the fees or allowances provided for under 26 U.S.C. 7610(a)(1).

(26 U.S.C. 7610)

§70.303 Rules and regulations.

(a) *Issuance.*

The Director, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of provisions of 26 U.S.C. enforced and administered by the Bureau (except where this authority is expressly given by 26 U.S.C. to any other person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration

of law in relation to taxes within the Director's jurisdiction.

(b) *Retroactivity.*

The Director, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the laws within the Director's jurisdiction shall be applied without retroactive effect. The Director may prescribe the extent, if any, to which any ruling relating to the laws within the Director's jurisdiction, issued by or pursuant to authorization from the Director, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.*

The Director, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of taxes within the Director's jurisdiction.

(26 U.S.C. 7805)

§70.304 Place for filing documents other than returns.

(a) If a document, other than a return, is required to be filed with a regional office, such document may be hand delivered to such office.

(b) For purposes of this section, a return or document will be considered to be hand carried if it is brought to the regional director (compliance) or designated delegate by the person required to file the return or other document, or by the person's agent. Examples of persons who will be considered to be agents, for purposes of the preceding sentence, are: Members of the taxpayer's family, an employee of the taxpayer, the taxpayer's attorney, accountant, or tax advisor, and messengers employed by the taxpayer. A return or document will not be considered to be hand carried if it is sent to the Bureau through the U.S. Mail.

(26 U.S.C. 6091)

§70.305 Timely mailing treated as timely filing.

(a) *General rule.*

Title 26 U.S.C. 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Title 26 U.S.C. 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined.*

The term *document*, as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provisions of 26 U.S.C. enforced and

administered by the Bureau.

(c) *Mailing requirements.*

(1) Title 26 U.S.C. 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service, as defined by the postal regulations (39 CFR Part 2). Title 26 U.S.C. 7502 does not apply to any document which is deposited with the mail service of any other country.

(iii)(A) If the postmark on the envelope or wrapper is made by the U.S. Postal Service, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of 26 U.S.C. 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see paragraph (c)(2) of this section, with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the U.S. Postal Service is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) If the postmark on the envelope or wrapper is made other than by the U.S. Postal Service, the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes that it was actually deposited in the mail before the last collection of the mail from the place of deposit

which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document, that the delay in receiving the document was due to a delay in the transmission of the mail, and the cause of such delay. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark which was not made by the U.S. Postal Service shall be disregarded, and whether the envelope was mailed in accordance with this section shall be determined solely by applying the rules of paragraph (c)(1)(iii)(A) of this section.

(2) If the document is sent by U.S. registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the U.S. postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document" includes any extension of time granted for such filing. Except as provided in 26 U.S.C. 5061 for the filing of returns and payment of a tax under 26 U.S.C. subtitle E, when the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday, shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery.*

(1) Title 26 U.S.C. 7502 is not applicable unless the document is delivered by U.S. mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer or office.

(2) Title 26 U.S.C. 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document.

(e) *Exceptions.*

This section shall not apply with respect to:

- (1) The filing of a document in, or the making of a payment to, any court,
- (2) Currency or other medium of payment unless actually received and accounted for, or
- (3) Returns, claims, statements, or other documents, or payments, which are required under any provision of 26 U.S.C. enforced and administered by the Bureau or the regulations thereunder to be delivered by any method other than

by mailing.

(26 U.S.C. 5061 and 7503)

§70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general.*

Title 26 U.S.C. 7503 provides that when the last day prescribed under provisions of 26 U.S.C. enforced and administered by the Bureau, for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in the determining of the last day for performance of any act. Title 26 U.S.C. 7503 is not applicable to the filing of returns and payment of tax under 26 U.S.C. subtitle E. Title 26 U.S.C. 7503 is applicable only in case an act is required under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau to be performed on or before a prescribed date or within a prescribed period. Title 26 U.S.C. 7503 applies to acts to be performed by the taxpayer (such as the filing of a claim for credit or refund of tax) and acts to be performed by the Director, the Chief, Tax Processing Center, or a regional director (compliance), (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax). For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E relating to alcohol, tobacco, and certain other excise taxes, see 26 U.S.C. §§5061 and 6302 and the regulations covering the specific commodity.

(b) *Legal holidays.*

(1) For the purpose of 26 U.S.C. 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays found in 5 U.S.C. 6103(a), as enacted and made effective by the Act of November 2, 1983 (97 Stat. 917), are:

- (i) January 1, New Year's Day,
- (ii) Third Monday in January, Birthday of Martin Luther King, Jr.,
- (iii) January 20, when such day is Inauguration Day,
- (iv) Third Monday in February, Washington's Birthday,
- (v) Last Monday in May, Memorial Day,
- (vi) July 4, Independence Day,
- (vii) First Monday in September, Labor Day,
- (viii) Second Monday in October, Columbus Day,
- (ix) November 11, Veterans' Day,
- (x) Fourth Thursday in November, Thanksgiving Day, and

(xi) December 25, Christmas Day.

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia. For the purpose of 26 U.S.C. 7503, when a legal holiday in the District of Columbia (other than Inauguration Day) falls on a Saturday it shall be treated as falling on the preceding Friday.

(2) In the case of any statement or other document required to be filed, or any other act required under the authority of provisions of 26 U.S.C. enforced and administered by the Bureau to be performed at any office of the Bureau or any other office or agency of the United States, located outside the District of Columbia, but within an ATF region, the term "legal holiday" includes, in addition to the legal holidays enumerated in paragraph (b)(1) of this section, any statewide legal holiday of the State where the act is required to be performed. If the act is performed in accordance with law at an office of the Bureau or any other office or agency of the United States located in a Territory or possession of the United States, the term "legal holiday" includes, in addition to the legal holidays described in paragraph (b)(1) of this section, any legal holiday which is recognized throughout the Territory or possession in which the office is located.

(26 U.S.C. 5061 and 7503)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-365, 60 FR 33674, June 28, 1995]

General Provisions Relating to Stamps, Marks or Labels

§70.311 Authority for establishment, alteration, and distribution of stamps, marks, or labels.

The Director may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to Subtitle E of the Internal Revenue Code (or to any provision of Subtitle F which relates to Subtitle E).

(26 U.S.C. 6801)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Registration

§70.321 Registration of persons paying a special tax.

(a) *Persons required to register.*

Every person engaged in a trade or business in respect of which a special tax is imposed by one of the following sections of the Internal Revenue Code is required to register with the Bureau of Alcohol, Tobacco and Firearms.

(1) Section 5081 (relating to special tax on proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses);

(2) Section 5091 (relating to special tax on brewers);

(3) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer);

- (4) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer);
- (5) Section 5276 (relating to special tax on persons holding permits to procure or use tax-free spirits, to procure, deal in, or use specially denatured spirits, or to recover specially or completely denatured spirits);
- (6) Section 5731 (relating to special tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors); or
- (7) Section 5802 (relating to importers, manufacturers and dealers of National Firearms Act weapons).

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

(b) *Procedure for registration.*

The registration required of a person by reason of the person being engaged in a trade or business, in respect of which one of the special taxes listed in paragraph (a) of this section is imposed, shall be accomplished by timely executing and filing, in accordance with the instructions relating thereto, ATF Form 5630.5, Special Tax Registration and Return.

(Approved by the Office of Management and Budget under control number 1512-0472)

(26 U.S.C. 5802, 7011)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-271, 53 FR 17549, May 17, 1988. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47653, Nov. 14, 1990; T.D. ATF-379, 61 FR 31426, June 20, 1996]]

Crimes, Other Offenses and Forfeitures

SOURCE: Sections 70.331 through 70.333 added by T.D. ATF-301, 55 FR 47653, Nov. 14, 1990, unless otherwise noted.

§70.331 Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Bureau any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$10,000 (\$50,000 in the case of a corporation) or imprisoned not more than 1 year, or both.

(26 U.S.C. 7207)

§70.332 Unauthorized use or sale of stamps.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in the Internal Revenue Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Director under provisions of 26 U.S.C. enforced and administered by

the Bureau for the collection or payment of any tax imposed thereunder, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

(26 U.S.C. 7209)

§70.333 Offenses by officers and employees of the United States.

Any officer or employee of the United States acting in connection with any provisions of 26 U.S.C. enforced and administered by the Bureau required to make a written report under the provisions of 26 U.S.C. 7214(a)(8) shall submit such report to the Director, or to a regional director (compliance) or to the Chief, Tax Processing Center.

(26 U.S.C. 7214)

Subpart E--Procedural Rules Relating to Alcohol, Tobacco, Firearms, and Explosives

SOURCE: T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47653, Nov. 14, 1990.

Provisions Relating to Distilled Spirits, Wines, and Beer

§70.411 Imposition of taxes, qualification requirements, and regulations.

(a) *Imposition of taxes.*

Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine and beer. Occupational taxes are imposed upon brewers, dealers in liquors, and proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses; on industrial users of tax-free distilled spirits; on dealers, users, and recoverers of specially denatured spirits; and as a prerequisite for drawback under section 5134 of the Internal Revenue Code, upon manufacturers of nonbeverage products.

(b) *Qualification requirements.*

Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with ATF usually by filing notice or application and bond with, and procuring permit from, the regional director (compliance), of the ATF region in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.*

The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the ATF are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements of formal and informal procedures, the forms, records, reports, and other documents required, and

the contents of applications, notices, registrations, permits, bonds, and other documents. Supplies of prescribed forms may be obtained from the office of any regional director (compliance). ATF Publication 1322.1, which contains a listing of alcohol, tobacco, and firearms public-use forms, may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

- (1) *Establishment and operation of distilled spirits plants.* Part 19 of title 27 CFR contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), and bottling (including bottling in bond) of distilled spirits. Part 19 also contains the regulations relating to distilled spirits for fuel use and the production of vinegar by the vaporizing process.
- (2) *Miscellaneous liquor transactions.* Part 170 of 27 CFR contains miscellaneous regulations relative to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor.
- (3) [Reserved]
- (4) *Gauging of distilled spirits.* Part 30 of title 27 CFR contains the regulations that prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.
- (5) *Rules of practice in permit proceedings.* Part 200 of title 27 CFR contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation, and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*), and disapproval, suspension, and revocation of industrial use, operating, withdrawal, and tobacco permits under the Internal Revenue Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record, after opportunity for hearing, under laws administered by the Bureau of Alcohol, Tobacco and Firearms.
- (6) *Basic permit requirements under the Federal Alcohol Administration Act.* 27 CFR part 1, issued pursuant to the Federal Alcohol Administration Act, as amended, contains the requirements relative to the issuance under the Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.
- (7) *Bulk sales and bottling of distilled spirits.* 27 CFR part 3, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(8) *Labeling and advertising of distilled spirits.* 27 CFR part 5, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, withdrawal of bottled imported distilled spirits from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(9) *American viticultural areas.* Part 9 of title 27 CFR contains the regulations that relate to American viticultural areas. The viticultural areas described in these regulations are approved for use as appellations of origin in accordance with 27 CFR part 4.

(10) *Production and removal of wine.* Part 24 of title 27 CFR contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of volatile fruit flavor concentrates, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar treatment; removals; taxpayment; return of unmerchantable taxpaid wine; use of wine for distilling material and manufacture of vinegar; and record and report requirements.

(11) *Bottling or Packaging of taxpaid wine.* Part 24 of title 27 CFR contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under part 19 of title 27 CFR, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(12) *Nonindustrial use of distilled spirits and wine.* 27 CFR part 2, issued under the Federal Alcohol Administration Act, as amended, specifies what uses of distilled spirits and wine are considered "nonindustrial," as that term is used in section 17 of the Federal Alcohol Administration Act.

(13) *Labeling and advertising of wine.* 27 CFR part 4, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(14) *Establishment and operations of breweries and experimental breweries.* Part 25 of title 27 CFR contains the regulations relating to the production (including concentration and reconstitution incident thereto) and removal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof, and the establishment and operations of experimental breweries.

(15) *Labeling and advertising of malt beverages.* 27 CFR part 7, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, including withdrawal of imported malt

beverages from customs custody, and the issuance of certificates of label approval.

(16) *Liquor dealers.* Part 194 of title 27 CFR contains the regulations relative to the special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restrictions on purchases of distilled spirits; reuse or refilling of liquor bottles; sale or possession of refilled or used liquor bottles; repackaging of alcohol for industrial use; recordkeeping and reporting requirements; and provisions relating to entry of premises and inspection of records by ATF officers.

(17) *Drawback of tax on spirits used in nonbeverage products.* Part 17 of title 27 CFR contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(18) *Production of volatile fruit-flavor concentrates.* Part 18 of title 27 CFR contains the regulations relating to the manufacture, removal, sale, storage, transfer in bond, transportation, recordkeeping and reporting requirements, and use of volatile fruit flavor concentrates. It includes provisions regarding the location, qualification, use, and operations of concentrate plants.

(19) *Tied-House.* 27 CFR part 6, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (b) of section 5 of the Act and provides the exception to these prohibitions. This part applies only to transactions between industry members and retailers.

(20) *Exclusive outlets.* 27 CFR part 8, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (a) of section 5 of the Act. This part applies only to transactions between industry members and retailers.

(21) *Commercial bribery.* 27 CFR part 10, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (c) of section 5 of the Act. This part applies to transactions between industry members and employees, officers, or representatives of trade buyers.

(22) *Consignment sales.* 27 CFR part 11, issued under the Federal Alcohol Administration Act, as amended, specifies sales arrangements prohibited by subsection (d) of section 5 of the Act and contains guidelines concerning the return of distilled spirits, wines, and malt beverages from a trade buyer. The regulations in this part apply to transactions between industry members and trade buyers.

(23) *Distribution and use of denatured alcohol and rum.* Part 20 of title 27 CFR contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sales, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured alcohol and rum.* Part 21 of title 27 CFR contains

the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the use of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in part 19 of title 27 CFR, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in part 20 of title 27 CFR.

(25) *Distribution and use of tax-free alcohol.* Part 22 of title 27 CFR contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and included requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 250 of title 27 CFR contains the regulations relating to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands. Regulations respecting spirits produced in Puerto Rico or the Virgin Islands and brought into the United States and transferred from customs custody to internal revenue bond are also contained in this part.

(27) *Importation of liquors.* Part 251 of title 27 CFR contains the substantive and procedural requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling of containers and packages.

(28) *Exportation of liquors.* Part 252 of title 27 CFR contains the regulations relating to exportation including, where applicable, lading for use on vessels and aircraft, transfer to a foreign-trade zone, or transfer to a manufacturing bonded warehouse, Class 6, of distilled spirits (including specially denatured spirits), beer (including beer concentrate), and wine, and transfer of distilled spirits and wine for deposit in a customs bonded warehouse, whether without payment of tax, free of tax, or with benefit of drawback. It includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

(Approved by the Office of Management and Budget under control number 1512-0472)

[T.D. ATF-251, 52 FR 19325, May 22, 1987, as amended by T.D. ATF-271, 53 FR 17549, May 17, 1988; T.D. ATF-299, 55 FR 24989, June 19, 1990. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47653, Nov. 14, 1990; T.D. ATF-376, 61 FR 31031, June 19, 1996; T.D. ATF-379, 61 FR 31426, June 20, 1996; T.D. ATF-432, 65 FR 69253, Nov. 16, 2000]

§70.412 Excise taxes.

(a) *Collection.*

Taxes on distilled spirits, wines, and beer are paid by returns. If the person responsible for paying the taxes has filed a proper bond with the regional director (compliance), such person may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, and beer during such semimonthly

period. Payment must accompany the return unless required to be made by electronic fund transfer (EFT). If the taxpayer is not qualified to defer taxpayment, or has been placed on a prepayment basis by the regional director (compliance), the taxpayer must prepay the tax on the distilled spirits, wines, or beer. Distilled spirits, wines, and beer tax returns are filed in accordance with the instruction on the return forms, which are furnished to industry members by ATF. Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, manufacturers of nonbeverage products, and industrial users of tax-free distilled spirits; by dealers, users, and recoverers of specially denatured spirits; and by proprietors of distilled spirits plants, bonded wine cellars, bonded wine warehouses, and taxpaid wine bottling houses. Detailed information respecting the payment of tax on liquors and the payment of occupational taxes, including the forms to be used and procedures to be followed, is contained in the respective regulations described in §70.411(c).

(b) *Assessment.*

If additional or delinquent tax liability is disclosed by an investigation, or by an examination of records, of a qualified plant or permittee, a notice (except where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error) is sent to the taxpayer advising of the basis and amount of the liability and affording the taxpayer an opportunity to submit a protest, with supporting facts, or to request a conference.

(Approved by the Office of Management and Budget under control number 1512-0472)

[T.D. ATF-251, 52 FR 19325, May 22, 1987, as amended by T.D. ATF-271, 53 FR 17549, May 17, 1988. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47653, Nov. 14, 1990]

§70.413 Claims.

(a) *Claims for remission.*

When distilled spirits (including distilling material and denatured spirits), wine, or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, such person may file claim on Form 5620.8 for remission of tax on the quantity that was lost. The regional director (compliance) may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the regional director (compliance) makes a factual determination, and notifies the claimant of allowance or rejection of the claim. If the claim is rejected, and circumstances so warrant, the regional director (compliance) will take appropriate steps to collect the tax.

(b) *Claims for abatement.*

When the tax on distilled spirits, wines, or beer is assessed and the taxpayer thinks that the tax is not due under the law, such taxpayer may file a claim for abatement of the tax on ATF Form 5620.8 with the official who made demand for the tax. ATF Form 5620.8 may be procured from the regional director (compliance) or the Chief, Tax Processing Center. The regional director (compliance) or the Chief, Tax Processing Center may call upon the taxpayer to file a bond in double the amount of

the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, the taxpayer is notified of the allowance or rejection of the claim. If the claim is rejected, the regional director (compliance) or the Chief, Tax Processing Center, will initiate action to collect the tax.

(c) *Claims for refund--*

(1) *Taxes illegally, erroneously, or excessively collected.* A claim for refund of taxes illegally, erroneously, or excessively collected may be filed by the taxpayer with the official who collected the tax. Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and the taxpayer may then bring suit in the U.S. District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) for refund of tax paid on:

(i) Spirits returned to bonded premises, lost by accident or disaster, or taken as samples by the United States, or

(ii) Wine returned to bond as unmerchantable, or lost by disaster, or

(iii) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. If the claim is allowed, a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a copy of the claim giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.*

A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) for allowance of loss, credit of tax, or relief from tax liability, as applicable, on

(1) Spirits returned to bonded premises, lost or destroyed on bonded premises, or in transit thereto, or lost by accident or disaster;

(2) Wine lost or destroyed on bonded premises or in transit thereto and unmerchantable domestic wine returned to bond;

(3) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft

or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God;

(4) Denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and

(5) Tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment-disaster losses.*

When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, the person holding such product for sale at that time may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) of the region in which the product was lost, rendered unmarketable, or condemned, for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

(Approved by the Office of Management and Budget under control number 1512-0141)

[T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47653, Nov. 14, 1990]

§70.414 Preparation and filing of claims.

(a) *Distilled spirits at distilled spirits plants.*

Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 19 of Title 27 CFR. It is not necessary to file a claim for credit of tax on taxpaid samples taken by ATF officers from distilled spirits plants, as the regional director (compliance) will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.*

Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in part 20 of title 27 CFR.

(c) *Tax-free alcohol.*

Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in part 22 of title 27 CFR.

(d) *Wine spirits and wine at bonded wine cellar.*

Procedural instructions in respect of claims for:

- (1) Remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto,
- (2) Allowance of losses of wine in bond, and
- (3) Credit or refund of tax paid on unmerchantable domestic wine returned to bond are contained in part 24 of title 27 CFR.

(e) *Beer.*

Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer returned to a brewery or voluntarily destroyed; or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God are contained in part 25 of title 27 CFR.

(f) *Distilled spirits, wines, or beer for export.*

Procedural instructions in respect of claims for:

- (1) Drawback of internal revenue tax on distilled spirits, wines, or beer for export, use as supplies on certain vessels or aircraft, or deposit in a foreign-trade zone, or deposit of distilled spirits or wine in a customs bonded warehouse, and
- (2) Remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment or free of tax and lost during transportation to the port of export, customs bonded warehouse (distilled spirits and wine only), manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, as applicable, are contained in part 252 of title 27 CFR. Procedural instructions as to claims respecting export with benefit of drawback of tax on domestic distilled spirits products containing spirits from Puerto Rico or the Virgin Islands are contained in parts 19 and 252 of title 27 CFR.

(g) *Miscellaneous.*

Procedural instructions are contained in 27 CFR Part 70, subparts F and G in respect of claims for--

- (1) Refund or credit of tax on distilled spirits, wines or beer where such refund or credit is claimed on the grounds that tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive, and where such refund or credit is subject to the limitations imposed by section 6423 of the Internal Revenue Code.
- (2) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after June 30, 1959.

(h) *Special taxes.*

Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in

part 194 of title 27 CFR. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within 3 years from the date of payment of the tax.

(i) *Low wines at vinegar plants.*

Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in part 19 of title 27 CFR.

(j) *Distilled spirits used in nonbeverage products.*

Procedural instructions in respect of claims for drawback of excise tax and claims for refund of special (occupational) tax, submitted by persons using distilled spirits in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes, are contained in part 17 of title 27 CFR.

(k) *Reopening claims.*

A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the official who originally rejected the claim for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(l) *Claimant's rights under law and regulations.*

Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to the rights extended to such claimant under law and regulations.

(Approved by the Office of Management and Budget under control number 1512-0141)

[T.D. ATF-251, 52 FR 19325, May 22, 1987, as amended by T.D. ATF-299, 55 FR 24989, June 19, 1990. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47654, Nov. 14, 1990; T.D. ATF-376, 61 FR 31031, June 19, 1996; T.D. ATF-379, 61 FR 31426, June 20, 1996]

§70.415 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 51 and of penalties for violation of the Federal Alcohol Administration Act, is set forth in §§70.482 through 70.484.

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.416 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier, or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Director. Applications for such permission to take office shall be prepared and filed in accordance with instructions available from the regional director (compliance) or from the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

§70.417 Rulings.

The procedure for rulings in alcohol tax matters is set forth in §70.471.

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.418 Conferences.

Any person desiring a conference in the office of the regional director (compliance) of the region in which such person is located, the Chief, Tax Processing Center, in Cincinnati, or of the Director, in Washington, relative to any matter arising in connection with such person's operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.419 Representatives.

Title 31 CFR part 8 is applicable to all representatives of the taxpayer, in the office of the Director, the Chief, Tax Processing Center, or the regional director (compliance).

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.420 Forms.

For forms to be used, *see* §70.411(c).

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

Provisions Relating to Tobacco Products, and Cigarette Papers and Tubes

§70.431 Imposition of taxes; regulations.

(a) *Taxes.*

Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on tobacco products, and cigarette papers and tubes manufactured in or imported into the United States. Occupational taxes are imposed by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors. Subchapter D of chapter 78 of the Internal Revenue Code imposes a tax (equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture) on tobacco products, and cigarette papers and tubes of Puerto Rican and Virgin Islands manufacture brought into the United States and withdrawn for consumption or sale.

(b) *Regulations.*

The procedural requirements with respect to matters relating to tobacco products, and cigarette papers and tubes are contained in the regulations listed below:

- (1) Part 200 of title 27 CFR relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Internal Revenue Code.
- (2) Part 270 of title 27 CFR relates to the manufacture of tobacco products, the payment by manufacturers of tobacco products of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of tobacco products.
- (3) Part 275 of title 27 CFR relates to tobacco products, and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, Class 6; and the release of such articles from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.
- (4) Part 285 of title 27 CFR relates to the manufacture of cigarette papers and tubes, the payment by manufacturers of cigarette papers and tubes of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of such articles.
- (5) Part 290 of title 27 CFR relates to the exportation (including supplies for vessels and aircraft and transfers to a foreign-trade zone) of tobacco products, and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and the qualification of and operations by export warehouse proprietors.
- (6) Part 295 of title 27 CFR relates to the removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.
- (7) Part 296 of title 27 CFR relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to:
- (i) Limitations imposed by section 6423 of the Internal Revenue Code on the refund or credit of tax paid or collected on tobacco products, and cigarette papers and tubes;
 - (ii) Losses of tobacco products, and cigarette papers and tubes caused by disasters occurring in the United States on or after September 3, 1958; and
 - (iii) Purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

(Approved by the Office of Management and Budget under control number 1512-0472)

[T.D. ATF-251, 52 FR 19325, May 22, 1987, as amended by T.D. ATF-271, 53 FR 17549, May 17, 1988. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47654, Nov. 14, 1990]

§70.432 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.*

Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by making application for a permit and filing bond

and other required documents with, and obtaining a permit from, the regional director (compliance) for the region in which operations are to be conducted.

(b) *Manufacturers of cigarette papers and tubes.*

Every person, before commencing business as a manufacturer of cigarette papers and tubes, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by filing bond and other required documents with the regional director (compliance) for the region in which operations are to be conducted.

(c) *Puerto Rican manufacturers of tobacco products.*

Every manufacturer of tobacco products in Puerto Rico who desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a) of the Internal Revenue Code on tobacco products of Puerto Rican manufacture coming into the United States must file a bond with the regional director (compliance). Such bond is conditioned on the principal's paying, at the time and in the manner prescribed in the regulations, the full amount of tax computed on the tobacco products which are released for shipment to the United States. No bond is required if the tax is prepaid.

(d) *Proprietors of customs warehouses.*

Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove under part 290 tax-exempt cigars for exportation (including supplies for vessels and aircraft), or for delivery for subsequent exportation, is required to file a bond with the regional director (compliance) for the region in which the customs warehouse is located. However, removal of cigars for sale or consumption in the United States is subject to customs regulations.

(e) *Drawback of tax.*

Taxpaid tobacco products, and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files a claim and otherwise complies with the provisions contained in the applicable regulations referred to in §70.431. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(f) *General.*

Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in §70.431.

[T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47654, Nov. 14, 1990]

§70.433 Collection of taxes.

(a) *Tobacco products.*

Taxes on tobacco products are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, such manufacturer may defer payment at

the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if the manufacturer has defaulted in any way in paying the taxes, the manufacturer is required to file a prepayment return prior to removal of such products, and to continue so doing until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer with the appropriate regional director (compliance). Taxes on cigars produced in a customs bonded manufacturing warehouse, Class 6, are paid on the basis of a return to the director of customs in accordance with customs procedures and regulations. Taxes on tobacco products imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid by the importer to the director of customs on the basis of a return made on the customs form by which release from customs custody is to be effected. However, taxes on tobacco products manufactured in Puerto Rico and brought into the United States may be prepaid in Puerto Rico on the basis of a return. If a Puerto Rican manufacturer has filed a proper bond, such manufacturer may defer payment at the time of release for shipment to the United States and file a semimonthly return to cover the taxes. If the manufacturer has not filed such a bond or if such manufacturer has defaulted in any way in payment of taxes, the manufacturer must file a prepayment return prior to removal of such products for shipment to the United States, and continue to do so until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns in Puerto Rico, with remittances, are filed with the Chief, Puerto Rico Operations, in the Bureau of Alcohol, Tobacco and Firearms.

(b) *Cigarette papers and tubes.*

Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a semimonthly return. Such returns, with remittances, are filed with the regional director (compliance) for the region in which the factory is located. Taxes on cigarette papers and tubes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid to the director of customs before removal on the basis of a return made on the customs form by which release from customs custody is effected. However, taxes on cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States may be prepaid in Puerto Rico on the basis of a return.

(c) *Special tax.* Special (occupational) taxes are paid by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors on the basis of a return. Special tax stamps are issued to denote the payment of special (occupational) taxes.

(d) *General.*

Detailed information about the payment of taxes on tobacco products, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in §70.431.

(Approved by the Office of Management and Budget under control number 1512-0472)

[T.D. ATF-251, 52 FR 19325, May 22, 1987, as amended by T.D. ATF-271, 53 FR 17549, May 17, 1988. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47654, Nov. 14, 1990]

§70.434 Assessments.

When additional or delinquent tax liability on tobacco products, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer indicating the basis for, and amount of, the liability and affording the taxpayer an opportunity to show cause, in writing, against assessment.

[T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.435 Claims.

(a) *General.*

Detailed requirements, including the procedure to be followed in the filing of a claim, the form to be used, the supporting documents which must be submitted, the time within which a claim must be filed, and any other limitations or instructions are contained in the applicable regulations referred to in §70.431.

(b) *Abatement of assessment.*

Abatement of the unpaid portion of an assessment of any tax on tobacco products, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed.

(c) *Allowance of tax.*

Relief from the payment of tax on tobacco products, and cigarette papers and tubes may be extended to a manufacturer by approval of a claim for allowance where such articles, after removal from the factory upon determination of tax and prior to the time for payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market.

(d) *Remission of tax liability.*

Remission of the tax liability on tobacco products, and cigarette papers and tubes may be extended to a manufacturer or export warehouse proprietor liable for the tax, where such articles in bond are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer or export warehouse proprietor.

(e) *Refund of tax.*

Taxes paid on tobacco products, cigarette papers and tubes lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, importer, or export warehouse proprietor, or withdrawn from the market, may be refunded. Refunds may also be made within certain limitations for overpayments of tax on tobacco products, and cigarette papers and tubes.

(f) *Losses caused by disaster.*

Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed from the factory or released from customs custody, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

(g) *Drawback of tax.*

Drawback may be allowed to the person who paid the tax on tobacco products, and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States.

(h) *Credit of tax.*

Taxes paid on tobacco products, and cigarette papers and tubes lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, or withdrawn from the market, may be credited upon approval of a claim.

(i) *Reopening claims.*

A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the regional director (compliance) for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(j) *Claimant's rights under law and regulations.*

Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to rights extended under law and regulations.

[T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47654, Nov. 14, 1990]

§70.436 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 52 is set forth in §§70.482 through 70.484.

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.437 Rulings.

The procedure for rulings in tobacco tax matters is set forth in §70.471.

§70.438 Forms.

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the regulations referred to in §70.131(b). Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from regional directors (compliance). ATF Publication 1322.1, which contains a listing of alcohol, tobacco, and firearms public-use forms, may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Such publication is available, for reference purposes, in Bureau of Alcohol, Tobacco and Firearms reading rooms.

Provisions Relating to Firearms, Shells and Cartridges, and Explosives

§70.441 Applicable laws.

(a) Chapter 53 of the Internal Revenue Code (26 U.S.C. 5801-5872), the provisions of which are derived from the National Firearms Act Amendments of 1968 (82 Stat. 1227), imposes a tax on the making and transfer in the United States of machine guns, destructive devices, and certain other types of firearms, and an occupational tax upon every importer and manufacturer of, and dealer in, such firearms. Section 1(b) (2) of the act of August 9, 1939 (52 Stat. 1291; 49 U.S.C. 781-788), makes provision for the seizure and forfeiture of vessels, vehicles, and aircraft which are used to transport, carry, or possess, or to facilitate the same, any firearms with respect to which there has been committed any violation of the National Firearms Act or any regulations issued pursuant thereto.

(b) Title I, State Firearms Control Assistance (18 U.S.C., Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213), as amended by Pub. L. 99-308 (100 Stat. 449), Pub. L. 99-360 (100 Stat. 766) and Pub. L. 99-408 (100 Stat. 920), provides for the licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms, and establishes controls for firearms and ammunition acquisitions and dispositions.

(c) Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99-308 (100 Stat. 449) and Pub. L. 99-360 (100 Stat. 766), provides that no person may ship or transport any firearms or ammunition in interstate or foreign commerce, or receive any firearms or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearms or ammunition in or affecting commerce, who (1) has been convicted of a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802), (4) has been adjudicated as a mental defective or has been committed to a mental institution, (5) is an alien illegally or unlawfully in the United States, (6) has been discharged from the Armed Forces under dishonorable conditions, or (7) having been a citizen of the United States, has renounced citizenship.

(d) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and part 47 of this chapter are applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war. The Secretary of the Treasury is authorized to

control, in furtherance of world peace and the security and foreign policy of the United States, the import of articles enumerated on the U.S. Munitions Import List.

(e) Title XI, Regulation of Explosives (18 U.S.C. chapter 40) of the Organized Crime Control Act of 1970 (84 Stat. 922) provides for the licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives in interstate or foreign commerce, and for issuance of permits for users who buy or transport explosives in interstate or foreign commerce.

(f) Chapter 32 of the Internal Revenue Code (26 U.S.C. 4181), imposes a tax upon the sale by the manufacturer, producer, or importer of pistols, revolvers, firearms (other than pistols and revolvers), and shells and cartridges.

[T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47653, Nov. 14, 1990, as amended by T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

§70.442 Taxes relating to machine guns, destructive devices, and certain other firearms.

Part 179 of title 27 CFR contains the regulations relative to the:

- (a) Payment of special (occupational) taxes by manufacturers and importers of and dealers in, machine guns, destructive devices, and certain other types of firearms,
- (b) Payment of the tax on the making or transfer of such firearms,
- (c) Registration, identification, importation, and exportation of such firearms,
- (d) Keeping of books and records and rendering of returns, and
- (e) The forfeiture and disposition of seized firearms under the provisions of the National Firearms Act.

§70.443 Firearms and ammunition.

(a) *Commerce in firearms and ammunition.*

(1) 27 CFR part 178 contains the regulations relative to:

- (i) The licensing of importers and manufacturers of firearms and ammunition, collectors of firearms, and dealers in firearms,
- (ii) The identification of firearms,
- (iii) The acquisition and disposition of firearms and ammunition,
- (iv) The records required to be kept by licensees, and
- (v) The forfeiture and disposition of seized firearms and ammunition, under the provisions of title I of the Gun Control Act of 1968, as amended, and also
- (vi) The restrictions regarding the receipt, possession, or transportation of firearms by certain persons.

(b) *Firearms and ammunition excise taxes.*

(1) 27 CFR part 53 contains the regulations relative to:

- (i) Payment of excise tax on the sale of pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges,
- (ii) Establishing constructive sales price,
- (iii) Registration for tax free sales,
- (iv) Keeping of records and rendering of returns, and
- (v) The exportation or use in further manufacture of tax-paid articles.

[T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

§70.444 Importation of arms, ammunition, and implements of war.

Part 47 of title 27 CFR implements Executive Order 11958 and supplements the import provisions contained in parts 178 and 179 of title 27 CFR. Part 47 establishes the U.S. Munitions Import List and contains the regulations relative to:

- (a) The registration of importers in arms, ammunition, and implements of war,
- (b) Import permit requirements,
- (c) Import certification and verification,
- (d) Import restrictions applicable to certain countries, and
- (e) The forfeiture of seized arms, ammunition, and implements of war under the Arms Export Control Act.

§70.445 Commerce in explosives.

Part 55 of title 27 CFR contains the regulations relative to:

- (a) Licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives,
- (b) Permits for users who buy or transport explosives in interstate or foreign commerce,
- (c) Construction of different types of storage facilities for three classes of explosive material,
- (d) The identification of explosives,
- (e) the acquisition and disposition of explosives,
- (f) The records required to be kept by licensees and permittees,
- (g) The forfeiture and disposition of seized explosive material, under the provision of Title XI of the Organized Crime Control Act of 1970,
- (h) Operations by licensees or permittees and hearings procedure after denial or revocation of license or permit, and also
- (i) Restrictions regarding the receipt, possession, or transportation of explosives by certain persons under the provisions of Title XI of the Organized Crime Control Act of

1970.

§70.446 Rulings.

The procedure for rulings in the firearms and explosives area is set forth in §70.471.

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.447 Assessments.

Where the evidence disclosed by investigation establishes that additional or delinquent tax liability has been incurred and not paid, the regional director (compliance) or the Chief, Tax Processing Center will list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued to the taxpayer by the regional director (compliance) or the Chief, Tax Processing Center.

[T.D. ATF-301, 55 FR 47654, Nov. 14, 1990]

§70.448 Claims.

(a) The procedures applicable to the filing of claims under chapter 53 of the Internal Revenue Code are set forth below:

(1) Claims for refund of the making and transfer taxes, and of occupational taxes, whether paid pursuant to assessment or voluntarily paid, and claims for redemption of "National Firearms Act" stamps, are prepared and filed in accordance with the procedures set forth in 27 CFR part 179.

(2) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are prepared and filed in accordance with the procedures set forth in §70.413(b).

(3) Claims may be reopened or amended in accordance with the provisions of §70.414 (k) and (l).

(b) The procedures applicable to the filing of claims relating to the tax imposed by section 4181 of the Internal Revenue Code are set forth below:

(1) Claims for credit or refund of manufacturers taxes, whether paid pursuant to assessment or voluntarily paid, are prepared and filed in accordance with the procedures set forth in §70.123 and 27 CFR 53.171 through 53.186. For regulations under section 6416 of the Internal Revenue Code, relating to conditions to allowance and other procedural requirements, see 27 CFR 53.172 through 53.186.

(2) Claims for abatement of manufacturers taxes are to be prepared and filed in accordance with §70.125.

(3) Claims may be reopened or amended in accordance with the provisions of §70.414 (k) and (l).

[T.D. ATF-331, 57 FR 40328, Sept. 3, 1992]

§70.449 Offers in compromise.

The procedures in the case of offers in compromise of liabilities under 26 U.S.C. 4181

and chapter 53 are set forth in §§70.482 and 70.484.

[T.D. ATF-331, 57 FR 40329, Sept. 3, 1992]

Seized Property

§70.450 Seizure and forfeiture of personal property.

Part 72 of title 27 CFR contains the regulations relative to the personal property seized by officers of the Bureau of Alcohol, Tobacco and Firearms as subject to forfeiture as being used, or intended to be used, to violate certain Federal laws; the remission or mitigation of such forfeiture; and the administrative sale or other disposition, pursuant to forfeiture, of such seized property other than firearms seized under the National Firearms Act and firearms and ammunition seized under Title I of the Gun Control Act of 1968, as amended. For disposal of firearms under the National Firearms Act, see 26 U.S.C. 5872(b). For disposal of firearms and ammunition under Title I of the Gun Control Act of 1968, see 18 U.S.C. 924(d). For disposal of explosives under Title XI of Organized Crime Control Act of 1970, see 18 U.S.C. 844(c).

Possessions

§70.461 Shipments to the United States.

For regulations under 26 U.S.C. 7652, see 27 CFR part 250 relating to liquors and articles from Puerto Rico and the Virgin Islands; and 27 CFR part 275 relating to cigars, cigarettes, and cigarette papers and tubes.

(68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-249, 52 FR 5961, Feb. 27, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§70.462 Shipments from the United States.

For regulations under 26 U.S.C. 7653, see 27 CFR part 196 relating to stills; 27 CFR part 252 relating to exportation of liquors; and 27 CFR part 290, relating to exportation of cigars, cigarettes, and cigarette papers and tubes.

(68A Stat. 908, as amended; (26 U.S.C. 7653))

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-249, 52 FR 5961, Feb. 27, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Rulings

§70.471 Rulings.

(a) *Requests for rulings.*

Any person who is in doubt as to any matter arising in connection with:

- (1) Operations or transactions in the alcohol tax area or under the Federal Alcohol Administration Act,
- (2) Operations or transactions in the tobacco tax area, or
- (3) The taxes relating to machine guns, destructive devices, and certain other

firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturer of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976; and the taxes relating to pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges imposed by chapter 32 of the Internal Revenue Code, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, to the Chief, Tax Processing Center, or to the regional director (compliance) of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the Chief, Tax Processing Center or to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations.

(b) *Routine requests for information.*

Routine requests for information should be addressed to the regional director (compliance) of the region in which the inquirer is located.

[T.D. ATF-251, 52 FR 19325, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47655, Nov. 14, 1990; T.D. ATF-331, 57 FR 40329, Sept. 3, 1992]

Administrative Remedies

§70.481 Agreements for payment of liability in installments.

(a) *Authorization of agreements.*

The regional director (compliance) or the Chief, Tax Processing Center, is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the regional director (compliance) or the Chief, Tax Processing Center determines that such agreement will facilitate collection of such liability.

(b) *Extent to which agreements remain in effect--*

(1) *In general.* Except as otherwise provided in this paragraph (b), any agreement entered into by an authorized ATF official under paragraph (a) of this section shall remain in effect for the term of the agreement.

(2) *Inadequate information or jeopardy.* The official who entered into an installment agreement under paragraph (a) of this section may terminate such agreement if:

- (i) Information which the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete, or
- (ii) The regional director (compliance) or the Chief, Tax Processing Center

believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) *Subsequent change in financial conditions--*

(i) *In general.*

If the official who entered into an installment agreement under paragraph (a) of this section makes a determination that the financial condition of the taxpayer has significantly changed, the official may alter, modify, or terminate such agreement.

(ii) *Notice.* Action may be taken by the regional director (compliance) or the Chief, Tax Processing Center under paragraph (b)(3)(i) of this section only if:

(A) Notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

(B) Such notice includes the reasons why the official believes a significant change in the financial condition of the taxpayer has occurred.

(4) *Failure to pay an installment or any other tax liability when due or to provide requested financial information.* The official who entered into an installment agreement under paragraph (a) of this section may alter, modify, or terminate such agreement in the case of the failure of the taxpayer:

(i) To pay an installment at the time such installment payment is due under such agreement,

(ii) To pay any other tax liability at the time such liability is due, or

(iii) To provide a financial condition update as requested by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6159)

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

§70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C.

(a) *In general.*

The Director may compromise any civil or criminal liability arising under the provisions of 26 U.S.C. enforced and administered by ATF prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. (For compromise of forfeiture liability, see §70.484 of this part.) Any such liability may be compromised only upon one or both of the following two grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.*

A compromise agreement may relate to civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of 26 U.S.C., or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.*

A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of falsification or concealment of assets by the taxpayer, or mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise--*

(1) *Submission of offers.*

(i) Offers in compromise under this section shall be submitted on ATF Form 5640.1, along with any additional information required by the official authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such official.

(ii) The Associate Director (Compliance Operations) has the authority to accept or reject offers in compromise of civil liability (which do not exceed \$1,000,000) and criminal liability arising under 26 U.S.C. 4181 and chapters 51, 52, and 53 in cases not subject to compromise by regional directors (compliance).

(iii) Each regional director (compliance) has the authority to accept or reject offers in compromise of:

(A) Tax liabilities arising from:

(1) The illegal production of untaxpaid distilled spirits, wines, or beer,

(2) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms,

(3) The failure to pay firearms making or transfer taxes; and

(B) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles.

(iv) The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in §§70.483 and 70.484 of this part.

(v) In civil cases involving liability of \$500 or over and in criminal cases the functions of the General Counsel under 26 U.S.C. 7122(b) are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms.

(vi) The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States will not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) *Record.*

Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of the Chief Counsel for the Bureau with respect to such compromise, with that official's reason therefor, and including a statement of:

(1) the amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

However, no such opinion shall be required with respect to the compromise of any

civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than \$500.

(f) Requirement with respect to statute of limitations.

No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both or either assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) Inspection with respect to accepted offers in compromise.

For provisions relating to the inspection of returns and accepted offers in compromise, *see* 26 U.S.C. 6103(k)(l).

(26 U.S.C. 7122)

(Approved by the Office of Management and Budget under control number 1512-0472)

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990, as amended by T.D. ATF-331, 57 FR 40329, Sept. 3, 1992]

§70.483 Offers in compromise of violations of Federal Alcohol Administration Act.

The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 5640.2 to the regional director (compliance) or an ATF officer. Such offers are considered by the regional director (compliance) and are forwarded to the Associate Director (Compliance Operations) for final action. When the offer is acted upon, the proponent and the regional director (compliance) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

§70.484 Offers in compromise of forfeiture liabilities.

The Director or designated delegate is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Bureau. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656-E to the Director or designated delegate. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

§70.485 Closing agreements.

(a) In general.

The Director may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom the person acts) in respect of any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Director that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement--*

(1) *In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods which ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(c) *Finality.*

A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements--*

(1) *Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is filed with a court of the United States. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Director in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

(26 U.S.C. 7121)

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

§70.486 Managerial review.

If at any step in the collection process a taxpayer does not agree with an ATF employee under the authority of the regional director (compliance) or the Chief, Tax Processing Center, the taxpayer has the right to discuss the matter with the employee's immediate supervisor. The ATF employee will give the taxpayer the name and telephone number of the person to be contacted.

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

Subpart F--Application of Section 6423, Internal Revenue Code of 1954, as Amended, to Refund or Credit of Tax on Distilled Spirits, Wines, and Beer

SOURCE: T.D. ATF-376, 61 FR 31031, June 19, 1996, unless otherwise noted.

General

§70.501 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

Article. The commodity in respect to which the amount claimed was paid or collected as a tax.

Claimant. Any person who files a claim for a refund or credit of tax under this subpart.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

I.R.C. Internal Revenue Code of 1986, as amended.

Owner. A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

Person. An individual, a trust, estate, partnership, association, company, or corporation.

Tax. Any tax imposed by 26 U.S.C. 5001-5066, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under any such sections, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an extraction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

§70.502 Applicability to certain credits or refunds.

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

- (a) Any claim for drawback,
- (b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, or lost or destroyed, and
- (c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an article seized and forfeited, or destroyed, as contraband.

§70.503 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

- (a) The claimant or owner has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,
- (b) No understanding or agreement exists for any such relief or shifting, and
- (c) If the claimant or owner has neither sold nor contracted to sell the articles involved in such claim, such claimant or owner agrees that there will be no such relief or shifting.

§70.504 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that such claimant is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That the claimant bore the ultimate burden of the amount claimed, or
- (b) That the claimant has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That:
 - (1) the owner of the article furnished the claimant the amount claimed for payment of the tax;
 - (2) The claimant has filed with the regional director (compliance) the written consent of such owner to the allowance to the claimant of the credit or refund; and
 - (3) Such owner satisfies the requirements of paragraph (a) or (b) of this section.

§70.505 Requirements on persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in §70.506, and
- (b) Comply with any other provisions of law or regulations which may apply to the claim.

Claim Procedure

§70.506 Execution and filing of claim.

Claims to which this subpart is applicable shall be executed on Form 2635 (5620.8) in accordance with the instructions on the form and shall (except as hereinafter provided) be filed with the regional director (compliance) for the region in which the tax was paid. (For provisions relating to handcarried documents, see 27 CFR 70.304). Claims for credit or refund of taxes collected by district directors of customs, to which the provisions of section 6423, I.R.C., are applicable and which Customs regulations (19 CFR Part 24-- Customs Financial and Accounting Procedure) require to be filed with the regional director (compliance) of the region in which the claimant is located, shall be executed and filed in accordance with applicable Customs regulations and this subpart. The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the regional director (compliance) of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made part of the claim the supporting data required by §70.507. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

§70.507 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of §70.506 must set forth or contain the following:

- (a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.
- (b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.
- (c) The written consent of the owner to the allowance of the refund or credit to the claimant (where the owner of the article in respect of which the tax was paid furnished the claimant the amount claimed for the purpose of paying the tax).
- (d) If the claimant (or owner, as the case may be) has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant (or owner, as the case may be) agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.
- (e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an

increase in rate of tax applicable to an article, a statement as to whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions to allowance set forth in §70.504.

(g) The regional director (compliance) may require the claimant to furnish as a part of the claim such additional information as may be deemed necessary.

§70.508 Time for filing claim.

No credit or refund of any amount of tax to which the provisions of this subpart apply shall be made unless the claimant files a claim therefor within the time prescribed by law and in accordance with the provisions of this subpart.

Penalties

§70.509 Penalties.

It is an offense punishable by fine and imprisonment for anyone to make or cause to be made any false or fraudulent claim upon the United States, or to make any false or fraudulent statements, or representations, in support of any claim, or to falsely or fraudulently execute any documents required by the provisions of the internal revenue laws, or any regulations made in pursuance thereof.

Subpart G--Losses Resulting From Disaster, Vandalism, or Malicious Mischief

SOURCE: T.D. ATF-376, 61 FR 31033, June 19, 1996, unless otherwise noted.

§70.601 Meaning of Terms.

When used in this subpart, terms are defined as follows in this section. Words in the plural shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

Alcoholic liquors or liquors. Distilled spirits, wines, and beer lost, made unmarketable, or condemned, as provided in this subpart.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake, or other similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume on which the internal revenue tax has been paid or determined, and if imported, on which duties have been paid.

Claimant. The person who held the liquors for sale at the time of the disaster or other specified cause of loss and who files a claim under this subpart.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, DC.

Distilled spirits, or spirits. Ethyl alcohol and other distillates such as whisky, brandy, rum, gin, vodka, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), on which the internal revenue tax has been paid or determined and, if imported, on which duties have been paid.

Duly authorized official. Any Federal, State or local government official who is authorized to condemn liquors on which a claim is filed under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Major Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe defined as a "major disaster" under the Disaster Relief Act (42 U.S.C. 5122(2)), which occurs in any part of the United States and which the President has determined causes sufficient damage to warrant "major disaster" assistance under that Act.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Tax. (1) With respect to distilled spirits, "tax" means the internal revenue tax that is paid or determined on spirits.

(2) With respect to wines, "tax" means the internal revenue tax that is paid or determined on the wine.

(3) With respect to beer, "tax" means the internal revenue tax that is paid or determined on the beer.

United States. When used in a geographical sense includes only the States and the District of Columbia.

Wines. All still wines, effervescent wines, and flavored wines, on which internal revenue wine tax has been paid or determined, and if imported, on which duty has been paid.

Payments

§70.602 Circumstances under which payment may be made.

(a) Major disasters.

The regional director (compliance) shall allow payment (without interest) of an amount equal to the tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the duty paid, on distilled spirits, wines, and beer previously withdrawn, if the liquors are lost, made unmarketable, or condemned by a duly authorized official as the result of a major disaster (as defined in §70.601).

(b) Other causes of loss--

(1) *Payment.* The regional director (compliance) shall allow payment (without interest) of an amount equal to the tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the duty paid, on distilled spirits, wines, and beer previously withdrawn, if the liquors are lost, made unmarketable, or condemned by a duly authorized official as a result of:

- (i) Fire, flood, casualty, or other disaster; or
- (ii) Breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief.

(2) *Minimum claim.* No claim of less than \$250 will be allowed for losses resulting from any disaster or damage described in paragraph (b)(1) of this section.

(c) *General.*

Payment under this section may be made only if:

- (1) The disaster or other specified cause of loss occurred in the United States;
- (2) At the time of the disaster or other specified cause of loss, the liquors were being held for sale by the claimant;
- (3) Refund or credit of the amount claimed, or any part of the amount claimed, has not or will not be claimed for the same liquors under any other law or regulations; and
- (4) The claimant was not indemnified by any valid claim of insurance or otherwise for the tax and/or duty on the liquors covered by the claim.

Claims Procedures

§70.603 Execution and filing of claim.

(a) *General.*

- (1) Claims under this subpart shall be filed on Form 2635 (5620.8), in original only, with the regional director (compliance) of the region in which the liquors were lost, became unmarketable, or were condemned.
- (2) The claim shall include all the facts on which the claim is based, and be accompanied by a record of inventory of the liquors lost, made unmarketable, or condemned. (See §70.604.)
- (3) The claim shall contain a statement that no other claim for refund or credit of the amount claimed, or for any part of the amount claimed, has been or will be filed under any other law or regulations.

(b) *Major disasters.*

Claims for refund of tax and/or duty on liquors which were lost, became unmarketable, or were condemned as a result of a major disaster must be filed not later than 6 months from the day on which the President determines that a major disaster has occurred.

(c) *Other causes of loss.*

- (1) Claims for amounts of \$250 or more for refund of tax and/or duty on liquors which were lost, became unmarketable, or were condemned as the result of:
 - (i) Fire, flood, casualty, or other disaster; or

(ii) Damage (excluding theft) resulting from vandalism or malicious mischief, must be filed within 6 months after the date on which the disaster or damage occurred.

(2) Claims for amounts less than \$250 will not be allowed.

§70.604 Record of inventory to support claims.

(a) *Claims relating to distilled spirits.*

The record of inventory of distilled spirits lost, made unmarketable, or condemned, which is required to support claims filed under §70.603, shall show the following information:

(1) Name and business address of claimant (as shown on claim, Form 2635 (5620.8)).

(2) Address where the spirits were lost, became unmarketable, or were condemned, if different from the business address.

(3) Kind of spirits.

(4) Brand name.

(5) For full cases, show:

- (i) Number of cases;
- (ii) Serial numbers;
- (iii) Bottles per case;
- (iv) Size of bottles;
- (v) Wine gallons per case;
- (vi) Proof; and
- (vii) Proof gallons.

(6) For bottles not in cases, show:

- (i) Total number;
- (ii) Size of bottles;
- (iii) Wine gallons;
- (iv) Proof; and
- (v) Total proof gallons.

(7) Total proof gallons for all items.

(b) *Claims relating to wines.*

The record of inventory of wines lost, made unmarketable, or condemned, which is required to support claims filed under §70.603, shall show the following information:

(1) Name and business address of claimant (as shown on claim, Form 2635 (5620.8)).

(2) Address where the wines were lost, became unmarketable, or were condemned, if different from the business address.

(3) Kind of wine.

(4) Percent of alcohol by volume.

(5) Number of barrels or kegs.

(6) Kind and number of other bulk containers.

(7) Number of full cases and bottles per case.

(8) Size of bottles.

(9) Number of bottles not in cases and wine gallons.

(10) Total wine gallons.

(c) *Claims relating to beer.*

The record of inventory of beer lost, made unmarketable, or condemned, which is required to support claims filed under §70.603, shall show the following information:

(1) Name and business address of claimant (as shown on claim, Form 2635 (5620.8)).

(2) Address where the beer was lost, became unmarketable, or was condemned, if different from the business address.

(3) Number and size of barrels.

(4) *For full cases, show:*

(i) Number of cases;

(ii) Bottles or cans per case; and

(iii) Size (in ounces) of bottles or cans.

(5) Number and size of bottles and cans not in cases.

(6) Quantity in terms of 31-gallon barrels.

(7) Total quantity.

(d) *Special instructions.*

(1) Inventories of domestic liquors, imported liquors, and liquors manufactured in the Virgin Islands shall be reported separately.

(2) Liquors manufactured in Puerto Rico may not be included in claims filed under this subpart. Claims for losses of Puerto Rican liquors shall be filed with the Secretary of the Treasury of Puerto Rico under the laws of Puerto Rico.

§70.605 Claims relating to imported, domestic, and Virgin Islands liquors.

(a) Claims involving taxes on domestic liquors, imported liquors, and liquors manufactured in the Virgin Islands must show the quantities of each separately in the claim.

(b) A separate claim on Form 2635 (5620.8) must be filed for customs duties.

§70.606 Claimant to furnish proof.

The claimant shall furnish proof to the satisfaction of the regional director (compliance) regarding the following:

(a) That the tax on the liquors, or the tax and duty if imported, was fully paid; or the tax, if not paid, was fully determined.

(b) That the liquors were lost, made unmarketable, or condemned by a duly authorized official, by reason of damage sustained as a result of a disaster or other cause of loss specified in this subpart.

(c) The type and date of occurrence of the disaster or other specified cause of loss, and the location of the liquors at the time.

(d) That the claimant was not indemnified by a valid claim of insurance or otherwise for the tax, or tax and duty, on the liquors covered by the claim.

(e) That the claimant is entitled to payment under this subpart.

§70.607 Supporting evidence.

(a) The claimant shall support the claim with any evidence (such as inventories, statements, invoices, bills, records, labels, formulas, stamps) that is available to submit, relating to the quantities and identities of the liquors, on which duty has been paid or tax has been paid or determined, that were on hand at the time of the disaster or other specified cause of loss and alleged to have been lost, made unmarketable, or condemned as a result of it.

(b) If the claim is for refund of duty, the claimant shall furnish, if possible:

(1) The customs number;

(2) The date of entry; and

(3) The name of the port of entry.

§70.608 Action on claims.

The regional director (compliance) shall date stamp and examine each claim filed under this subpart and will determine the validity of the claim. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the regional director (compliance) regarding his or her findings.

Destruction of Liquors

§70.609 Supervision.

When allowance has been made under this subpart for the tax and/or duty on liquors condemned by a duly authorized official or made unmarketable, the liquors shall be destroyed by suitable means under supervision satisfactory to the regional director (compliance), unless the liquors were previously destroyed under supervision satisfactory to the regional director (compliance). The Commissioner of Customs will notify the regional director (compliance) as to allowance under this subpart of claims for duty on unmarketable or condemned liquors.

Penalties

§70.610 Penalties.

- (a) Penalties are provided in 26 U.S.C. 7206 for making any false or fraudulent statement under the penalties of perjury in support of any claim.
- (b) Penalties are provided in 26 U.S.C. 7207 for filing any false or fraudulent document under this subpart.
- (c) All laws and regulations, including penalties, which apply to internal revenue taxes on liquors shall, when appropriate, apply to payments made under this subpart the same as if the payments were actual refunds of internal taxes on liquors.

Subpart H--Rules, Regulations and Forms

§70.701 Rules and regulations.

(a) *Formulation.*

(1) Alcohol, tobacco, firearms, and explosives rules take various forms. The most important rules are issued as Treasury decisions, prescribed by the Director, and approved by the Secretary. Other rules may be issued over the signature of the Director or the signature of any other official to whom authority has been delegated. The channeling of rules varies with the circumstances. Treasury decisions are prepared in the Office of Compliance Operations and reviewed in the Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms. After approval by the Director, Treasury decisions are forwarded to the Secretary for further consideration and final approval.

(2) Where required by 5 U.S.C. 553, the Director publishes in the FEDERAL REGISTER general notice of proposed rules unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. Notice may also be published in the FEDERAL REGISTER in such other instances as may be desirable. This notice includes (i) a statement of the time, place, and nature of public rulemaking proceedings; (ii) reference to the authority under which the rule is proposed; and (iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Interested persons may participate in the rulemaking by submitting written data, views, or arguments. Persons may also submit requests for a public hearing. However, the Bureau reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

(3) If the Bureau determines that the public good will be served thereby, it may hold a public hearing for discussion of the issues raised by the proposed

regulations. Such a hearing is announced by a notice in the FEDERAL REGISTER, stating the time and place where the hearing is to be held. The following rules govern the conduct of the public hearing only if incorporated by reference in the notice announcing the hearing:

- (i) A person wishing to make oral comments at a public hearing shall submit, within the time prescribed in the notice of hearing, an outline of the topics he wishes to discuss, and the time he wishes to devote to each topic. Ordinarily, a period of 10 minutes is the time allotted to each person for making his oral comments.
- (ii) A person making oral comments should be prepared to answer questions not only on the topics listed in his outline but also on matters relating to any written comments which he has submitted.
- (iii) At the conclusion of the presentation of comments of persons listed in the agenda, to the extent time permits, other comments will be received.
- (iv) Written comments submitted prior to the hearing shall be available at the hearing for inspection. Any request for copies of such written comments is treated as a request for records under §70.802(g).
- (v) To the extent resources permit, the public hearings to which this paragraph applies may be transcribed.
- (vi) In unusual circumstances or for good cause shown, the application of rules contained in this paragraph may be waived.

(b) *Comments on proposed rules.*

Interested persons may submit data, views, or arguments with respect to a notice of proposed rulemaking published pursuant to 5 U.S.C. 553. Procedures are provided in §70.802(g) for members of the public to inspect and obtain copies of written comments submitted in response to proposed rules. All such comments are open in their entirety to public inspection. Therefore, the Bureau does not recognize any designation of material in comments as confidential or not to be disclosed, and any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in his comments. The name of any person submitting comments or requesting a public hearing, the issues which may be discussed at the hearing, and outlines relating to the hearing are open to public disclosure. (See paragraph (a)(3) of this section for rules relating to hearing outlines.)

(c) *Petition to change rules.*

Interested persons may petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule shall identify the section or sections of law involved; and a petition for the amendment or repeal of a rule shall set forth the section or sections of the regulations involved. The petition shall set forth the reasons for the requested action. Such petitions shall be given careful consideration, and the petitioner shall be advised of the action taken thereon. Petitions shall be addressed to the Director, Washington, DC 20226. Attention: Compliance Operations.

(d) *Publication of rules and regulations--*

(1) *General.* All Bureau of Alcohol, Tobacco and Firearms regulations and amendments thereto are published as Treasury Decisions which appear in the FEDERAL REGISTER, the Code of Federal Regulations, and the quarterly Alcohol, Tobacco and Firearms (ATF) Bulletin. The ATF Bulletin is the authoritative instrument of the Bureau for announcing Treasury decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record. It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). Procedures relating solely to matters of internal management are not published; however, regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published. Rulings and procedures reported in the Bulletin do not have the force and effect of Department of the Treasury Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. The Bulletin is published quarterly and may be obtained, on a subscription basis, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) *Objectives and standards for publication of ATF Rulings and ATF Procedures in the Alcohol, Tobacco and Firearms Bulletin.*

(i)

(A) An "ATF Ruling" is an official interpretation by the Bureau that has been published in the Bulletin for the information and guidance of taxpayers, Bureau officials, and others concerned. ATF Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

(B) An "ATF Procedure" is a statement of procedure that affects the rights or duties of taxpayers or other members of the public under law and regulations administered by the Bureau or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge. ATF Procedures establish methods for performing operations in compliance with the requirements of law and regulations. It is Bureau practice to publish as much of the internal management document or communication as is necessary for an understanding of the procedure. ATF Procedures may also be based on internal management documents which should be a matter of public knowledge even though not necessarily affecting the rights or duties of

the public.

(ii) It is the policy of the Bureau to publish in the Bulletin all rulings and other communications to members of the public or to Bureau field offices involving substantive law, procedures affecting taxpayer's rights or duties, or industry regulations, except those involving:

- (A) Issues specifically and clearly covered by statute or regulations;
- (B) Issues specifically covered by rulings, procedures, opinions, or court decisions previously published in the Bulletin;
- (C) Issues not likely to arise again because of unique or specific facts;
- (D) Determinations of fact rather than interpretations of law;
- (E) Acceptability under the law and regulations of containers, labels, and advertising involving alcoholic beverages;
- (F) Tobacco operations, such as the disposition of abandoned, seized, or condemned tobacco products;
- (G) Informers and informers' rewards; or
- (H) Disclosure of secret formulas, processes, business practices, and other similar information.

(iii)(A) It is the practice of the Bureau to publish as much of the ruling or communication as is necessary for an understanding of the position stated. However, in order to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as 18 U.S.C. 1905 and 26 U.S.C. 6103 and 7213, dealing with disclosure of information obtained from members of the public, identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted from the ruling.

(B) ATF Rulings published in the Bulletin do not have the force and effect of Department of the Treasury Regulations (including amendatory Treasury decisions) but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. No unpublished ruling or decision may be relied on, used, or cited by any officer or employee of the Bureau as a precedent in the disposition of other cases.

(C) Concerned persons generally may rely upon ATF Rulings published in the Bulletin in determining the Bureau treatment of their own transactions and need not request specific rulings applying the principles of a published ATF Ruling to the facts of their particular cases. However, since each ATF Ruling represents the conclusion of the Bureau as to the application of the law to the entire state of facts involved, taxpayers, Bureau personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions and ATF Rulings.

(D) Comments and suggestions from taxpayers or other concerned persons on ATF Rulings being prepared for publication in the Bulletin may be solicited, if justified by special circumstances. Conferences on ATF Rulings being prepared for publication will not be granted except where the Bureau determines that such action is justified by special circumstances.

(iv)(A) The Associate Director (Compliance Operations) is responsible for administering the program for the publication of ATF Rulings and ATF Procedures in the Bulletin including the standards for style and format.

(B) In accordance with the standards set forth in paragraph (d)(2)(ii) of this section, each Assistant Director is responsible for the preparation and appropriate referral for publication of ATF Rulings reflecting interpretations of substantive law made by his office and communicated in writing to members of the public or field offices. In this connection, the Chief Counsel is responsible for the referral to the appropriate Assistant Director, for consideration for publication as ATF rulings, of interpretations of substantive law made by his office.

(C) In accordance with the standards set forth in paragraph (d)(2)(ii) of this section, the Assistant Directors and the Chief Counsel are responsible for determining whether procedures established by an office under their jurisdiction should be published as ATF Procedures and for the initiation, content, and appropriate referral for publication of such ATF Procedures.

[T.D. ATF-47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF-201, 50 FR 12533, Mar. 29, 1985; T.D. ATF-249, 52 FR 5962, Feb. 27, 1987; Redesignated and amended by T.D. ATF-378, 61 FR 29955, June 13, 1996]

§70.702 Forms and instructions.

(a) *Tax return forms and instructions.*

Tax forms and instructions are developed by the Bureau to explain the requirements of Chapters 32, 51, 52, and 53 of Title 26 of the United States Code or regulations issued thereunder, and are issued for the assistance of taxpayers in exercising their rights and discharging their duties under such laws and regulations. The tax return forms are the instruments through which taxes are collected.

(b) *Other forms and instructions.*

The Bureau provides other necessary or appropriate forms for assisting the public in complying with the technical requirements of the laws and regulations administered by the Bureau. The material contained in the forms and instructions, and the arrangement thereof, is carefully considered and is designed to lead the preparer step-by-step through an orderly accumulation of data to an accurate report of the information required.

(c) *Procurement of forms and instructions.*

Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

[T.D. ATF-47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF-92, 46 FR 46914, Sept. 23, 1981; T.D. ATF-249, 52 FR 5962, Feb. 27, 1987; T.D. 372, 61 FR 20724, May 8, 1996. Redesignated and amended by T.D. ATF-378, 61 FR 29955, June 13, 1996]

Subpart I--Disclosure

§70.801 Publicity of information.

For information relating to the disclosure of records that is not contained in this Subpart I, see 31 CFR Part 1 and the Appendix of that Part relating to the Bureau of Alcohol, Tobacco and Firearms. Direct further questions to the Chief, Disclosure Branch, Washington, DC 20226, (202) 927-8480.

[T.D. ATF-378, 61 FR 29955, June 13, 1996]

§70.802 Rules for disclosure of certain specified matters.

(a) Accepted offers in compromise.

For each offer in compromise submitted and accepted pursuant to 26 U.S.C. 7122 in any case arising under Chapter 32 (relating to firearms and ammunition excise taxes) and Subtitle E (relating to alcohol, tobacco, and certain other excise taxes) of Title 26 of the United States Code, under section 107 of the Federal Alcohol Administration Act (27 U.S.C. 207) in any case arising under that Act, or in connection with property seized under Title I of the Gun Control Act of 1968 (18 U.S.C., Chapter 44) or title XI of the Organized Crime Control Act of 1970 (18 U.S.C., Chapter 40), a copy of the abstract and statement relating to the offer shall be kept available for public inspection, for a period of 1 year from the date of acceptance, in the office of the regional director (compliance) who received the offer and in the office of the Assistant Director (Liaison and Public Information), Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Information may not be disclosed, however, concerning any trade secrets, processes, operations, style of work, apparatus, confidential data, or any other matter within the prohibition of 18 U.S.C. 1905. "Return information" (defined at 26 U.S.C. 6103 (b)) may not be disclosed except as provided by 26 U.S.C. 6103 (k) (1).

(b) Information regarding liquor permits--

(1) *Applications for permits.* Information with respect to the handling of applications for basic permits under the Federal Alcohol Administration Act (27 U.S.C. 204), operating permits under 26 U.S.C. 5171, and industrial use permits under 26 U.S.C. 5271, is maintained for public inspection in the offices of regional director (compliance) until the expiration of 1 year following final action on these applications. See §1.59 of this chapter for more details.

(2) *Card index record of permits.* A current card index for:

- (i) All persons to whom industrial use permits have been issued pursuant to 26 U.S.C. 5271;
- (ii) All proprietors of distilled spirits plants to whom operating permits have been issued pursuant to 26 U.S.C. 5171, to cover distilling for industrial use, bonded warehousing of spirits for industrial use, or denaturing of spirits; and

(iii) All applicants for such industrial use and operating permits--is available for public inspection in the offices of regional director (compliance).

(c) *List of plants and permittees.*

Upon request, the regional director (compliance) shall furnish a list of any type of qualified proprietor or permittee located in his region.

(d) *Information relating to certificates of label approval for distilled spirits, wine, and malt beverages.*

Upon written request, the Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, shall furnish information as to the issuance, pursuant to section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) and Part 4, 5, or 7 of this chapter, of certificates of label approval, or of exemption from label approval, for distilled spirits, wine, or malt beverages. The request must identify the class and type and brand name of the product and the name and address of the bottler or importer thereof or of the person to whom the certificate was issued. The person making the request may obtain reproductions or certified copies of such certificates upon payment of the established fees prescribed by 31 CFR 1.7. Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 18 U.S.C. 1905 or 26 U.S.C. 6103.

(e) *True identity of companies authorized to use trade names.*

Information regarding the true identity (name and address) of companies authorized to use trade names is available in the office of regional director (compliance), for disclosure upon request to any member of the public.

(f) *Information relating to the tax classification of a roll of tobacco wrapped in reconstituted tobacco.*

Upon written request, the Deputy Associate Director (Regulatory Enforcement Programs), Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, shall furnish information as to a Bureau determination of the tax classification of a roll of tobacco wrapped in reconstituted tobacco. The request must identify the brand name of the product and the name and address of the manufacturer or importer. Information may not be disclosed, however, concerning any trade secrets, processes, operations, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 26 U.S.C. 6103 or 18 U.S.C. 1905.

(g) *Comments received in response to a notice of proposed rulemaking.*

Written comments received in response to a notice of proposed rulemaking may be inspected by any person upon compliance with the provisions of this paragraph. Comments may be inspected in the Disclosure Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Director, Attention: Chief, Disclosure Branch, Washington, DC 20226. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect

those comments. Copies of comments (or portions thereof) may be obtained by a written request addressed to the Chief, Disclosure Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. The person making the request for copies should allow a reasonable time for processing the request. The provisions of 31 CFR 1.7, relating to fees, apply with respect to requests made in accordance with this paragraph.

(27 U.S.C. 205; 22 U.S.C. 2778; 26 U.S.C. 7602; 5 U.S.C. 301)

[T.D. ATF-47, 43 FR 10687, Mar. 15, 1978, as amended by T.D. ATF-57, 44 FR 20794, May 9, 1979; T.D. ATF-201, 50 FR 12533, Mar. 29, 1985; T.D. ATF-249, 52 FR 5961, Feb. 27, 1987. Redesignated and amended by T.D. ATF-378, 61 FR 29955, 29956, June 13, 1996.]

§70.803 Requests or demands for disclosure in testimony and in related matters.

(a) *Authority.*

The provisions of this section are prescribed under the authority of 5 U.S.C. 301; section 2 of Reorganization Plan No. 26 of 1950 (64 Stat. 1280); 12 U.S.C. 3412; 18 U.S.C. 1905; section 2(g) of the Federal Alcohol Administration Act (27 U.S.C. 202(c)); and sections 5274, 6103, 7213, 7803 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 5274, 6103, 7213, 7803 and 7805).

(b) *Definitions.*

The following definitions apply whenever the defined terms appear in this section.

(1) *ATF officer or employee.* The terms *ATF officer* and *ATF employee* mean all officers and employees of the United States, engaged in the administration and enforcement of laws administered by the Bureau of Alcohol, Tobacco and Firearms, and appointed or employed by, or subject to the directions, instructions or orders of, the Secretary of the Treasury or his delegate.

(2) *ATF records or information.* The terms *ATF records* and *ATF information* mean any records (including copies thereof) or information, made or obtained by, furnished to, or coming to the knowledge of, any ATF officer or employee while acting in his official capacity, or because of his official status, with respect to the administration of laws administered by or concerning the Bureau of Alcohol, Tobacco and Firearms.

(3) *Demand.* The term *demand* means any subpoena, notice of deposition either upon oral examination or written interrogatory, or other order, of any court, administrative agency, or other authority.

(c) *Disclosure of ATF records or information prohibited without prior approval of the Director.*

The disclosure, including the production, of ATF records or information to any person outside the Department of the Treasury or to any court, administrative agency, or other authority, in response to any request or demand for the disclosure of such records or information shall be made only with the prior approval of the Director. However, nothing in this section shall restrict the disclosure of ATF records or information which the Director has determined is authorized under any provision of

statute, Executive order, or regulations, or for which a procedure has been established by the Director. For example, this section does not restrict the disclosure of ATF records or information under §71.22, nor does it restrict the disclosure of ATF records or information which is requested by U.S. attorneys or attorneys of the Department of Justice for use in cases which arise under the laws administered by or concerning the Bureau of Alcohol, Tobacco and Firearms and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(d) Delegation to Director of authority to determine disclosure and establish procedures.

The Director is hereby authorized to determine whether or not ATF officers and employees will be permitted to disclose ATF records or information in response to:

- (1) A request by any court, administrative agency, or other authority, or by any person, for the disclosure of such records or information; or
- (2) A demand for the disclosure of such records or information.

The Director is also authorized to establish such other procedures as he may deem necessary with respect to the disclosure of ATF records or information by ATF officers and employees. Any determination by the Director as to whether ATF records or information will be disclosed, or any procedure established by him in connection therewith, shall be made in accordance with applicable statutes, Executive orders, regulations, and any instructions that may be issued by the Secretary or his delegate. Notwithstanding the preceding provisions of this paragraph, the Director shall, where either he or the Secretary deems it appropriate, refer the opposing of a request or demand for disclosure of ATF records or information to the Secretary.

(e) Procedure in the event of a request or demand for ATF records or information--

(1) *Request procedure.* Any ATF officer or employee who receives a request for ATF records or information, the disposition of which is not covered by a procedure established by the Director, shall promptly communicate the contents of the request to the Director through the appropriate supervisor for the district or region in which he serves. The officer or employee shall await instructions from the Director concerning the response to the request. For the procedure to be followed in the event a person making a request seeks to obtain a court order or other demand requiring the production of ATF records or information, see paragraph (e)(2) of this section (immediately below).

(2) *Demand procedure.* Any ATF officer or employee who is served with a demand for ATF records or information, the disposition of which is not covered by a procedure established by the Director, shall promptly, and without awaiting appearance before the court, administrative agency, or other authority, communicate the contents of the demand to the Director through the appropriate supervisor for the district or region in which he serves. The officer or employee shall await instructions from the Director concerning the response to the demand. If it is determined by the Director that the demand should be opposed, the U.S. attorney, his assistant, or other appropriate legal representative shall be requested to respectfully inform the court, administrative agency, or other authority that the Director has instructed the officer or employee to refuse to

disclose the ATF records or information sought. If instructions have not been received from the Director at the time when the officer or employee is required to appear before the court, administrative agency, or other authority in response to the demand, the U.S. attorney, his assistant, or other appropriate legal representative shall be requested to appear with the officer or employee upon whom the demand has been served and request additional time in which to receive such instructions. In the event the court, administrative agency, or other authority rules adversely with respect to the refusal to disclose the records or information pursuant to the instructions of the Director, or declines to defer a ruling until instructions from the Director have been received, the officer or employee upon whom the demand has been served shall, pursuant to this section, respectfully decline to disclose the ATF records or information sought.

(3) *Affidavit required for testimony.* If testimony of an ATF officer or employee is sought by a request or demand on behalf of a party other than a State in any case or matter in which the United States is not a party, an affidavit, or if that is not feasible, a statement shall be submitted. The affidavit or statement shall be prepared by the party (or party's attorney) seeking the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), shall be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the Director has adequate time to consider whether to grant the request or demand. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The Director shall consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in--

- (i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;
- (ii) The disclosure of classified information;
- (iii) The disclosure of a confidential source or informant, unless the ATF officer or employee and the source or informant, have no objection;
- (iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the Director determines that the administration of justice requires disclosure;
- (v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which ATF has no interest, records or other official information.

(f) *State cases.*

Regional directors (compliance), special agents in charge, chiefs of field laboratories, and regional administrative officers, may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings in liquor, tobacco, firearms, or explosives cases in which the State is a party or on behalf of the State in any criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities.

However, in cases where a defendant in a criminal case requests or demands testimony or the production of ATF records or information, authorization from the Director is required. Production or testimony may not divulge information contrary to 26 U.S.C. 6103 and 7213, or 12 U.S.C. 3412. See also 18 U.S.C. 1905.

(g) *Penalties.*

Any ATF officer or employee who disobeys the provisions of this section will be subject to dismissal and may incur criminal liability.

[T.D ATF-57, 44 FR 27094, May 9, 1979, as amended by T.D. ATF-302, 55 FR 47325, Nov. 13, 1990. Redesignated by T.D. ATF-378, 61 FR 29955, June 13, 1996]